

June 13, 2006



**TRANSCRIPT
JUNE 13, 2006**

MONTGOMERY COUNTY COUNCIL

PRESENT

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman
	Michael Subin



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1 Council President Leventhal,
2 Could we get members seated? We have a lot to do. Councilman Knapp, could you join
3 us? Can we ring the bell for a quorum, please? Thank you. Okay, Ms. Lauer, are there
4 Agenda or Calendar changes?. Is Ms. Lauer here? Okay...

5
6 [LAUGHTER]

7
8 Council President Leventhal,
9 ...let's go ahead with Approval of Minutes, are there minutes for approval? No minutes for
10 approval. Let's move to the Consent Calendar. Can I get a motion to introduce the
11 Consent Calendar? The motion is made and seconded, I see no comments on the
12 Consent Calendar. Those in favor of adopting the Consent Calendar will signify by raising
13 their hands. Very good. Okay, Ms. Lauer are there agenda for calendar changes. We
14 know the agenda is all messed up.

15
16 Linda Lauer,
17 Yeah, other than the timing there is no agenda changes.

18
19 [LAUGHTER]

20
21 Linda Lauer,
22 There is the 7th floor hearing room tonight is where we're doing the public hearing for
23 SoccerPlex.

24
25 Council President Leventhal,
26 And that is a PHED Committee public hearing?

27
28 Linda Lauer,
29 Yes, it is.

30
31 [LAUGHTER]

32
33 Council President Leventhal,
34 And anyone's welcome to attend, but it is a PHED Committee meeting.

35
36 Linda Lauer,
37 It is, it is.

38
39 Council President Leventhal,
40 Okay, thank you very much.

41
42 Linda Lauer,
43 And then I do have some petitions, would you like me to read the petitions?

44
45 Council President Leventhal,



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1 Yes, let's hear about the petitions please. We did the Consent Calendar.

2
3 Linda Lauer,

4 We have number of petitions supporting various things, let me just go down the list. Grant
5 applications from HOC Partners to implement Tanglewood anti-gang violence, funding for
6 Food and Friends program, a grant for the Most Valuable Kids program, a grant request
7 Potomac Community Resources, supporting legislation on the clean and renewable
8 energy, supporting a grant request for Wilson Lane Youth Collective, a tuition freeze for
9 Montgomery College. Let's see, grant requests for CASA, supporting designation of
10 COMSAT for historic preservation, and a gym at the Bowie Mills site for OBGC Sports
11 Association, and a couple of petitions expressing concern for management issues having
12 to do with the Blair High School playing fields, and opposition to legislation that would put
13 restrictions on new construction additions and renovations.

14
15 Council President Leventhal,

16 Very good, thank you very much. Okay, we have already adopted the Consent Calendar.
17 I'm going to... well, let me just say this. I'm going to suggest that we take up the report on
18 the fireworks after the public hearings, and that will be the last item of the day. So, I think
19 in the balance of our time between now and 1:00 when we break for lunch we can
20 introduce these ZTAs, which -- is it in order to introduce these on block, and do resolutions
21 to establish public hearings on block, or do we need to do them sequentially?

22
23 Council Clerk,

24 No, that would be okay.

25
26 Council President Leventhal,

27 We can do it on block?

28
29 Council Clerk,

30 Yes.

31
32 Council President Leventhal,

33 So, let me get a motion then, if Councilmembers are amenable, to introduce ZTA 06-18,
34 ZTA 06-19, ZTA 06-20, and have public hearings on all three of those ZTAs on July 18th
35 at 1:30 p.m.

36
37 Councilmember Praisner,

38 So moved.

39
40 Council President Leventhal,

41 Mr. Praisner has moved and Mr. Knapp has seconded a resolution to establishing public
42 hearings on all three of those ZTAs on July 18th. Those in favor will signify by raising their
43 hands. It's unanimous among those present. Okay, so we'll talk about fireworks at the end
44 of the day after the public hearings are concluded. Does that work for Mr. Folkers, or do
45 you have a conflict?



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1
2 Paul Folkers,
3 [INAUDIBLE]

4
5 Council President Leventhal,
6 Can you be here at 1:45?

7
8 Paul Folkers,
9 [INAUDIBLE]

10
11 Council President Leventhal,
12 How much time do we need for this report?

13
14 Paul Folkers,
15 [INAUDIBLE]

16
17 Council President Leventhal,
18 Okay, well come up to the microphone, Paul. Come on up to the microphone and
19 introduce yourself, please.

20
21 Paul Folkers,
22 Paul Folkers, Assistant Chief Administrative Officer.

23
24 Council President Leventhal,
25 Okay, so we're having fireworks at Einstein High School and...

26
27 Paul Folkers,
28 Einstein High School and at South Germantown Regional Park. South Germantown
29 Regional Park on July first...

30
31 Council President Leventhal,
32 And in Germantown on July first?

33
34 Paul Folkers,
35 Yeah Germantown, South Germantown Regional Park July first, and Einstein High School
36 on July 4th.

37
38 Council President Leventhal,
39 Einstein High School on July fourth. Okay, do Councilmembers have questions? Ms.
40 Praisner.

41
42 Councilmember Praisner,
43 No, I don't have a question, I have a comment that we had already -- I worked with Linda
44 Lauer, scheduled some discussion at the MFP Committee on this broad issue with the
45 Regional Service Center Director and the Executive Branch. I think what I'd like to do is

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1 talk about -- at that time -- talk about the experience, after the fact, for the fireworks this
2 year. Any challenges or issues, and what will be our policy and approach in the future on
3 fireworks, given the fact that obviously we're not going to have them in downtown
4 Wheaton any more given the Westfield issue. And we do have the SoccerPlex, but some
5 folks believe that there should be at least an opportunity in the Downcounty area. That's
6 part of argument and the initiative that the Council was so aggressive about. But the
7 question is, now that we go through this process on a shorter time schedule of pulling this
8 together, how do we go forward with fireworks in a comprehensive way, and we look at
9 this issue prospectively and also learn from what we've seen. So I'd like to do that after
10 July 4th. Thank you.

11
12 Council President Leventhal,
13 Okay, thank you very much. Happy 4th of July. We will now hear from the Charter Review
14 Commission.

15
16 Barbara Hawk,
17 Good afternoon.

18
19 Council President Leventhal,
20 Good afternoon, thank you for joining us, please...

21
22 Barbara Hawk,
23 My name is Barbara Hawk, I'm the vice-chair of the Commission. I'm substituting for our
24 Chairman, Ken Muir, who unfortunately is in the hospital with pneumonia, but we have
25 every hope that he'll be fine. I did want to acknowledge Ken's able leadership. He did keep
26 us on track, which with this group was not a easy task, and we managed to finish on time
27 and our report was on time. Some of the Commissioners here, Bob Skelton, Shelly
28 Skolnick, Mollie Habermeier, and Cheryl Kagan. I did want to very much acknowledge the
29 help of the Council staff in this effort. They are truly a hardworking, focused group of
30 people: Sonya Healy and Justina Ferber, Carol Edwards, Joe Beach from the Executive
31 side, and Mark Hansen who tried to keep us on the straight and narrow, legally, and then
32 again, that wasn't always easy. You have the two sort of overwhelming amendments to
33 consider. The reason they look familiar is you got them from us in 2004, so we thought we
34 would come back with those. One is really a technical amendment in terms of counting
35 and how things are worked with the Executive veto. The other, the Genesis of the full-
36 time/part-time started back in 2003 ,with the Commission on Compensation and we still
37 felt it was worthy for you to consider a second time. Obviously, from the report, and I'm not
38 going to go into detail, because of the press of time today, we did consider a lot of other
39 issues, some charter-related, some a little off-field, but I think the one that we spent the
40 most time on was the composition of the Council. And we want to thank you all for
41 meeting with us because to a person we did not hear from the current Council that you felt
42 any changes, significant changes, were needed. And I think that advice weighed heavily
43 on the Commission. So we were happy to serve. We thank you for this opportunity. We're
44 here to answer any questions, take any comments, and we do have two of the



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Commissioners who were the authors of the minority reports from the 2006 report. So we thank you for this chance to be of service.

Council President Leventhal,

Thank you very much. We appreciate the good work in every cycle and certainly this year. Let us go ahead and proceed with a brief discussion of the -- first, the recommendations that require action on the ballot.

Barbara Hawk,

Questions? Comments?

Council President Leventhal,

Let us have them described to us briefly.

Barbara Hawk,

Okay. The one is to amend Section 107 of the Charter which basically provides that membership on the Council should be considered a full-time position for the purpose of determining compensation. Again, that links to the Compensation Commission. This was a 7-2 vote. As I said, we do have a Minority Report that was part of the report. I think discussion starts on page 6 of our report. The second amendment would amend Section 208 relating to Executive veto. This is one that came to us from the County Attorney's office and the Council Staff Attorney and it's a technical adjustment to clarify the timing of an Executive veto and just tightening up the language. I think Mark can answer any legal questions if you have any, or the Staff Director from the Council, but this was one that they offered us for the 2004 report. And as I said, it's more a clarification adjustment than anything of cosmic policy.

Council President Leventhal,

Okay, Ms. Praisner.

Councilmember Praisner,

I just wanted to make that point again, because I've heard some folks think that we're doing something, especially given issues associated with Executive power and veto, that we're changing the power. All we're doing is counting the, clarifying the calendar of how had the clock ticks when a veto occurs. So I think it's important that folks understand that, and I'm glad you made that point. I've had questions in the community that seem to suggest we were modifying the Executive's authority or you were recommending modifying the Executive's authority. Thank you.

Council President Leventhal,

Mr. Knapp.

Councilmember Knapp,

Thank you, Mr. President. I just wanted to thank the Commission for their efforts. I continue to be impressed with the level of professionalism that we get on the Boards and



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1 Commissions that we have, and I think you kind of set the mark. And I appreciate just the
2 time and commitment and the effort that you all made that you made to put into the
3 discussion and recommendations that you made, and so just my appreciation to all of you.
4 Thank you very much.

5
6 Council President Leventhal,
7 Okay. Mr. Andrews.

8
9 Councilmember Andrews,
10 Thank you, I want to thank you all, as well. It's obviously something you do because you
11 believe that it's important to have a County Government that is responsive to the
12 community, and that you want to do what you can to help make it the best it can be. And
13 all of you go in with that motivation, and I said that during the Planning Board interviews
14 this morning, one of the great things about serving on the County Council is having so
15 many applicants to choose from. We're rarely wanting and certainly not here, either. I
16 would like to say that I agree with the minority opinion on the Council structure. I do think
17 the Council should move to have more District Representatives than it currently has. I
18 think that the County has become so large that at-large seats are a problem. I have no
19 problem with at-large seats in a smaller area, like Rockville or Gaithersburg, but now that
20 we're almost a million people there are real barriers to running at-large, particularly the
21 amount of money that it takes. And so I think having more District seats will provide more
22 opportunity for people to get involved in the political process and more realistic chances
23 for them to be successful. And I would ask if anybody who participated in the minority
24 opinion would like to say a few words about their report?

25
26 Robert Skelton,
27 Thank you, Councilman. I did vote on...

28
29 Council President Leventhal,
30 Introduce yourself.

31
32 Robert Skelton,
33 I'm Bob Skelton. I did vote on the minority opinion. I agree that we do need more District
34 Councilmembers. I think five for a County this size is too little, and I think the Districts
35 themselves have grown too large really to really be able to be well represented with the
36 number that we have. And I also agree with your comments on the size -- with the County
37 getting this large. It is becoming harder and harder for minority representatives to run for
38 an at-large seat. I think we lose opportunities that way. And I was not swayed by the idea
39 that even with the at-large that we can vote for the majority of the Council I guess was the
40 presentation. And I think we'd be better served with more of a District representation than
41 we currently have. Thanks.

42
43 Council President Leventhal,
44 Ms. Floreen?



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1 Councilmember Floreen,

2 Thank you all for doing the work you've been doing. I know it's been a lengthy process.
3 And although you did not come up with earth-shattering recommendations, I know that
4 you worked very hard in your conversations, and certainly were very welcoming to
5 members of the Council who met with you, and I think with members of the public. So I
6 thank you for that time -- time and your effort. I have to simply observe there are more
7 people running at-large currently than I think than there are in Districts. So it's an
8 interesting fact of life at the moment. But I wanted to ask you about your proposed
9 amendments. Do you really think it's necessary to amend the Charter to address the
10 compensation issue? I mean, obviously you're recommending that. Do you feel that that is
11 a critical step for us to take in order to address the concern about sufficient compensation
12 to folks to encourage them to be involved?

13
14 Cheryl Kagan,

15 I'm Cheryl Kagan, and I'll take a hack at an answer. Compensation is always a challenging
16 issue in the public sector, and one of the things that we all knew intuitively, and certainly
17 heard through your testimony, was that each of you work an extraordinary number of
18 hours serving the community, and that is not necessarily recognized in compensation. The
19 report that we've gotten from the Compensation Commission is that because it's unclear
20 as to whether this is supposed to be full time or part-time job, and whether outside
21 employment is encouraged, expected, tolerated, or some variety of that, the question of
22 how to compensate and what sort of level to recommend has been a struggle for them.
23 We thought by recommending a clarification that this is, indeed, a full-time job, that that
24 could guide the Compensation Commission, and that you all would be paid appropriately
25 in this County, which has a very high cost-of-living to compensate you fairly for your work.

26
27 Councilmember Floreen,

28 And the other issue has to do with what's -- it's really a pretty technical recommendation
29 with respect to delivery of legislation and dates for approving it and the like or
30 disapproving it. Do you have strong passionate feelings on this subject?

31
32 Barbara Hawk,

33 I don't think the Commission felt as passionate as the Staff Attorney and the County
34 Attorney did, to be perfectly honest. You're right, it's a technical issue. It tightens up the
35 way things are counted. Maybe Marc would want to add something to that, but, no, this is
36 not a large Charter issue. Quite candidly, as one who's worked with all of the home rule
37 counties in the state, our Charter is in very good shape. So the fact that we could come up
38 with two fairly plain vanilla recommendations is, I think, a compliment to the drafters
39 originally, and the folks who have amended this over the years since 1948, so it's sort of a
40 left-handed compliment.

41
42 Councilmember Floreen,

43 Well, please accept my compliments and our compliments to you all for your hard work,
44 and your enthusiastic debate and your presence here and please accept our apologies for
45 making you wait a bit. Thank you very much.



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1
2 Council President Leventhal,
3 Ms. Praisner.

4
5 Councilmember Praisner,
6 I wanted to get to one of the recommendations for I guess is homework for us, or work for
7 us, and that's the issue of the ballot question process and the language and the wording.
8 Your recommendation is that we should look into it. And I guess, because that's not a
9 charter question, it's a legislative question, both in Annapolis and here, so we need to, I
10 guess, schedule some conversation on that issue with Mr. Faden and any other input. Is
11 the extent of the material that you have on this issue included within your charter report, or
12 are there other materials that you have that you could provide to the Council on the issue?

13
14 Barbara Hawk,
15 I think you received in your report all...

16
17 Councilmember Praisner,
18 All that you have, okay.

19
20 Barbara Hawk,
21 ...all of this material.

22
23 Councilmember Praisner,
24 Then to the extent we want to follow up, we probably should just schedule that
25 conversation with our County Council Attorney.

26
27 Barbara Hawk,
28 Exactly.

29
30 Councilmember Praisner,
31 Good, thank you very much.

32
33 Council President Leventhal,
34 What is the time frame, Mr. Farber or Mr. Hansen, by which this Council would need to
35 act, should we decide to place these two recommendations of the Charter Review
36 Commission, the one regarding full-time -- the position of Council being defined as full
37 time and the second having to do deadlines to exercise an Executive veto, when would
38 Council need to place those on the ballot?

39
40 Steve Farber,
41 I think the ultimate last time would be, I believe, in the second week of August. The
42 likelihood is that you would try to act before the Council goes on recess at the end of next
43 month.

44
45 Council President Leventhal,



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1 The end of July?

2

3 Steve Farber,

4 Yes.

5

6 Council President Leventhal,

7 By the end of July because I don't expect we're going to be in session in August. So, all
8 right. And so we have the public hearing on these recommendations on June 27th. There
9 are no more questions. We thank the Charter Review Commission for its excellent work.

10 And the Council stands in recess until the hour of 1:45, at which time we'll resume for
11 public hearings.

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Council President Leventhal,

Good afternoon ladies and gentlemen, this is a public hearing on Zoning Text Amendment 06-11, which would promote higher density mixed use development in close proximity to the Wheaton Metro Station through limited application of the optional method of development, revitalize and retain the existing street level retail area in the Wheaton Central Business District, amend the standards and approval procedures for optional and standard method development projects under the Wheaton Overlay Zone, and generally amend the Wheaton Retail Preservation Overlay Zone. Anyone who wants to submit additional material for the Council's consideration should do so before the close of business on June 16th. The Planning Housing and Economic Development Committee is tentatively scheduled to take up this ZTA on June 21st at 9:00 a.m. Please call 240-777-7900 to confirm. We have quite a few speakers on this ZTA; in two groups. The first group includes Greg Russ, James Core, Joe Davis, Fillipo Leo and Alex Stone. Witnesses please come forward. Mr. Russ, please press your button and Introduce yourself.

Greg Russ,

Thank you, Mr. President. For the record, Greg Russ from Montgomery County Planning Board. The Montgomery County Planning Board reviewed Zoning Ordinance Text Amendment 06-11 at its regular meeting on June 1st, 2006. By a vote of 3-0, with two abstentions, the Board recommends approval of the Zoning Text Amendment with amendments. The primary purpose of the overlay zone at the time of the Sector Plan approval was to protect the Wheaton marketplace area from large scale redevelopment that could transform downtown Wheaton into a large scale urban center with primary emphasis on office development. The 1990 Sector Plan recognized that the overlay zone could have a major effect on the redevelopment of Wheaton and the Plan text recommended that the zone should be reevaluated within a 10-year time frame to assess the effects on the downtown and to reflect on the effects of Metro accessibility. The Board believes that the subject reassessment of the overlay zone is in accord with the recommendations of the 1990 Sector Plan. While the Sector Plan Amendment process may be initiated in Fiscal Year '07, the three- to four-year sector plan approval period would effectively mean that the reevaluation of the overlay zone provisions would not be complete for at least three years. The proposed Text Amendment is designed to address redevelopment potential for the next three to five years and it recognizes that longer term vision should be addressed through the comprehensive amendment to the sector plan and resulting Sectional Map Amendment. The proposed Text Amendment encourages the retention of small stores and the provision of new housing, which are both in accord with the intent of the sector plan and other County policies. The Board majority believes that the Text Amendment as recommended by technical staff, and as further modified by the Board, does not revise the goals and objectives of the sector plan, but instead better implements the stated goals. Several of the actual recommendations of the Planning Board are as follows: Allow optional method of development throughout the overlay zone, regardless of the geographic area, but still retain the variety of small stores and retail in the marketplace by requiring that all new optional method developments in the overlay



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1 zone provide mixed use with retail on the first floor, at least 45% of the ground floor retail
2 space for small stores and restaurants, street facades with the elimination of surface
3 parking in front of the buildings, and allow the maximum building height up to 125 feet
4 throughout the overlay for optional method of development. Also, to allow new building
5 construction, renovations, and additions up to 5,000 square feet of gross floor area to be
6 exempt from the site plan requirements of the overlay zone. For optional method
7 developments do not allow the maximum FAR permitted in the underlying zone to be
8 increased if 60% of the street level space is devoted to small businesses. And do not
9 support the proposal to require at least one-half of the public use space to be green area.
10 The Planning Board further expressed concern with the use of the term "small business,"
11 since it is not a defined term in the Zoning Ordinance and since the term varies based on
12 the industry it is associated with.

13
14 [BEEPING]

15
16 Greg Russ,

17 Instead, the Board recommends that only the size and space requirements for retail and
18 restaurants uses be used to describe the small stores associated with this Text
19 Amendment. Thank you, Mr. President.

20
21 Council President Leventhal,

22 Thank you. Mr. Core.

23
24 James Core,

25 Thank you for holding this hearing today. I offer special thanks to Councilmembers
26 Praisner and Perez for attending the last town hall meeting in Wheaton. I only wish you all
27 could have been there to hear that this proposal enjoys widespread community support.
28 My wife and I are new residents of Wheaton. We bought our home there two and a half
29 years ago. I've become involved by volunteering on the Wheaton Redevelopment
30 Advisory Committee, but today I'm here as an individual, an individual that strongly
31 supports this amendment that is before you. This legislation enables redevelopment,
32 protects small businesses, and encourages green space in Wheaton. You can imagine my
33 surprise when I learned that outdated zoning laws and procedures are a major barrier to
34 improving the downtown. Rules should not stifle progress, harm small businesses, and
35 deprive citizens of a vibrant place to live and to work. This legislation is about three things:
36 the future of a community, fairness, and, I dare say, your legacies as leaders. My first
37 point is that Wheaton is at a tipping point. New homes and investments surrounding, but
38 excluding the downtown, suggest that the community is trending in the right direction.
39 Regrettably, the center of the community is languishing. It lacks the infrastructure and
40 amenities to support a modern, vibrant, pedestrian-friendly community that can support
41 shops and residences. You have the opportunity to tip Wheaton in the direction of
42 progress or, alternatively, to condemn it to a future of slow but persistent decay. Failure of
43 this Council to act decisively will tip it in the wrong direction. Please, ask yourselves do
44 you want a vibrant attractive community or more of the same, old, run-down buildings in a
45 struggling business district that is unable to attract investment? This brings me to my



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1 second point, please treat Wheaton fairly. Please change the zoning so that we are
2 treated equitably compared to the other communities in the County. It's my understanding
3 that building height limitations and onerous review requirements favor the other business
4 districts throughout Montgomery County. Essentially, and simply put, Wheaton can't win.
5 The additional cost and time it takes to get similar projects completed makes Wheaton
6 uncompetitive. The proof is the lack of investment in the Wheaton CBD during the last 20
7 years. May I add that this legislation is a great deal for the County government and for
8 taxpayers. This is almost a no-cost urban renewal project. You don't have to condemn
9 acres of land to start this process, you simply have to update the rules. Finally, this is
10 about leadership. We need to look over the horizon and enable progress. All the
11 community wants is the opportunity to prosper. Change happens, it's inevitable. There are
12 some people who oppose this amendment. Why? Perhaps it's nostalgia or a mistaken
13 belief that doing nothing will keep the future from arriving. The facts are that the County is
14 different now than it was 20 years ago. There are new people, new opportunities...

15
16 [BEEPING]

17
18 James Core,

19 ...new preferences and a strong desire to breathe life into tired, old Wheaton. In
20 conclusion, you have the opportunity to tip Wheaton in the direction of progress. Define
21 your legacy, pass this legislation that has wide community support. Exercise the
22 leadership required to enable Wheaton's renaissance, look to the future, have the courage
23 to treat my community fairly. I have faith that you can do this during this Council session.
24 Thank you.

25
26 Council President Leventhal,
27 Thank you. Mr. Davis.

28
29 Joe Davis,

30 Good afternoon, Council President, members of the County Council. I'm Joe Davis,
31 director of the Wheaton Redevelopment Program. I'm here today to speak in favor of
32 enactment of Zoning Text Amendment 06-11. This is a proposal to amend the Wheaton
33 Retail Preservation Overlay Zone. The Text Amendment was prepared by my office in
34 close coordination with Natalie Cantor, who's the director of the Mid-County Services
35 Center, the Wheaton Redevelopment Advisory Committee, and the Wheaton Urban
36 District Advisory Committee. This legislation is the result of a multi-year effort to involve
37 the Wheaton community in developing a vision for the downtown area. The goals and
38 objectives of the 1990 Sector Plan to preserve the small business, street level character of
39 downtown Wheaton remains important public policy. However, the zoning tool used to
40 achieve it is now viewed as an impediment to downtown redevelopment efforts. In fact, the
41 County Council and Planning Board were concerned about long-term effects of the
42 overlay zone and included language in the sector plan text recommending that within 10
43 years of plan enactment the provisions of the overlay zone should be reevaluated to
44 assess its effects on the downtown after the opening of the Metro Transit Station. The
45 sector plan is now 16 years old. To date the community's visioning efforts have included a

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1 number of steps. The first was an assessment of the downtown that was begun in 1999 in
2 partnership with the National Trust For Historic Preservation's Main Street Center. This
3 effort focused on opportunities to -- for revitalizing downtown Wheaton. After extensive
4 public discussion, community surveys, and a two-day charrette, four different development
5 scenarios were identified, reflecting community consensus points. In accepting all four
6 scenarios, the consensus was any one or combination of scenarios would be acceptable.
7 And these maps with the blue trim represent the four different visions that were looked at
8 for Wheaton at that time. The Main Street effort drew attention to the zoning limitations
9 and led to discussion of the need to consider changes. In 2003 Natalie Cantor formed an
10 ad hoc committee to evaluate sector plan recommendations. In the spring of 2004, this
11 committee concluded that the sector plan amendment process should be initiated as soon
12 as possible to address long-term vision for the downtown. And then an amendment to the
13 Wheaton Retail Preservation Overlay Zone should be prepared to address zoning
14 constraints that restrict short-term redevelopment opportunities. Last year the Wheaton
15 Redevelopment Advisory Committee endorsed a town center vision that embraces
16 principles of new urbanism, transit-oriented development, and Smart Growth. And Ms.
17 Floreen, you may remember, you attended that meeting that evening of the advisory
18 committee. The committee recognized that many of the features of the vision cannot be
19 implemented under current zoning restrictions. The subject Text Amendment was
20 prepared to respond to the issues raised by the various studies. On March 1st of this year
21 a town meeting was held in Wheaton to discuss the zoning changes that were being
22 recommended. Over 80 people attended this meeting and most speakers were in favor of
23 changes to the overlay zone. The subject Text Amendment proposes several important
24 changes to the overlay zone, which can be summarized as follows: Do not require site
25 plan approval for small, standard method development projects that include less than
26 20,000 square feet of total floor area and are less than 42 feet in height. Encourage Smart
27 Growth development by allowing the optional method of development with special
28 standards appropriate for downtown Wheaton. Retain street level floor space for small
29 shops that characterize the downtown. Provide for more streamlined review processes for
30 redevelopment projects appropriate for an urban area. We look forward to enactment of
31 the subject Text Amendment so that we can move forward with the redevelopment effort
32 that's so important for Wheaton's future. Thank you.

33
34 Council President Leventhal,
35 Thank you. Mr. Leo.

36
37 Fillipo Leo,
38 Good afternoon County Council President and members of the County Council. I am
39 Fillipo Leo, chair of the Wheaton Urban District Advisory Committee. I'm providing
40 testimony on behalf of the committee in support of the enactment of the Text Amendment
41 06-11. This legislation is a proposal to amend the Wheaton Retail Preservation Overlay
42 Zone. The Wheaton Retail Preservation Overlay Zone was developed in 1990, and part of
43 the last comprehensive update of the Wheaton CBD Sector Plans. The overlay zone
44 currently restricts the new development and redevelopment in two ways: First
45 development is limited to the standard method of development only. The high density

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1 optional method of development is not allowed. Second, any new development under the
2 lower density standard method of development must receive a site plan approval. This
3 process costs a lot of money, it takes a lot of time, and it discourages small projects from
4 moving forward. In short, you hurt business. The Wheaton Urban District Advisory
5 Committee supports excluding projects involving less than 3,000 square feet of floor
6 space and less than 42 feet of building heights from the site plan approval requirement.
7 We also support allowing the high density optional method of development provided that a
8 significant percent of the street level space is set aside for small business use. We
9 support the [INAUDIBLE] limited proposal in the Text Amendment with a requirement of
10 one-half of a requirement public use space maintaining as a green space. This
11 requirements are important for Wheaton. In 16 years Wheaton has experienced only four
12 projects that have gone through the site plan approval process. The Wheaton Urban
13 District Advisory Committee is very concerned that the existing requirements of the
14 overlay zone are to restrict and avoid redevelopment opportunity in downtown Wheaton.
15 We believe that it is Wheaton's turn to experience revitalization, just like Bethesda, Silver
16 Spring, and Rockville have experienced in recent years. However, by allowing more urban
17 development in the core, we believe it is crucial to retain the small business in Wheaton.
18 We support an economic development program that would help small business adjust to
19 changing economic conditions that will likely accompany the development. We encourage
20 the business community to work with the County to improve the business operation so that
21 business can adjust to the coming change. In addition to present the option of the
22 Wheaton Urban District Advisory Committee I would like to offer my view as a business
23 owner in downtown Wheaton. I look forward to the positive changes that can occur here.
24 While I want to make sure that Wheaton has the same opportunity as other town centers
25 in the County to grow and prosper. I also want Wheaton to retain its street level, small
26 business character. The Wheaton Urban District Advisory Committee strongly supports
27 enactment of this Text Amendment, which we believe is important for Wheaton's future.
28 Thank you.

29
30 Council President Leventhal,
31 Thank you. Alex Stone is not here. Are you representing the Mid-County Citizens Advisory
32 Board?

33
34 Blaine Charak,
35 Yes, Mr. Council President.

36
37 Council President Leventhal,
38 And your name, please?

39
40 Blaine Charak,
41 My name is Blaine Charak...

42
43 Council President Leventhal,
44 Oh, sure, Blaine.



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1 Blaine Charak,

2 ...and I'm also a member of the Mid-County Board and I'm testifying to you on behalf of
3 the Board and I thank you for the opportunity.

4
5 Council President Leventhal,
6 Please go ahead.

7
8 Blaine Charak,

9 Mid-County Board supports Zoning Text Amendment 06-11, the amendment to the
10 Wheaton Retail Preservation Overlay Zone as legislation which will have substantial
11 benefits to the residents and business owners located in the zone and the County
12 residents who want to shop and dine close to home. The ZTA reflects Smart Growth
13 principles promoting transit-oriented development and higher density nearest to the
14 Wheaton Metro station. In addition, provisions for small business retention will help
15 preserve the diverse small and family owned businesses the public has enjoyed over the
16 years. The ZTA places Wheaton on an equal footing -- no more, no less -- with areas such
17 as Bethesda and Silver Spring by exempting smaller scale, standard development
18 projects from the requirements of site plan approval. The current provisions of the overlay
19 zone creates an added burden to business owners in Wheaton who may want to renovate
20 their properties but are precluded by the cost of the process. In closing, the Mid-County
21 Board urges the Council to approve this Zoning Text Amendment, including the 20,000
22 square foot threshold for standard method site plan review. Thank you.

23
24 Council President Leventhal,

25 Okay, thank you very much. There are questions from Ms. Floreen and Mr. Silverman. Ms.
26 Floreen.

27
28 Councilmember Floreen,

29 Thank you, Mr. President. This question is for everyone, I guess. I was on the Planning
30 Board, Joe was down there. Did you write the overlay zone...way back when?

31
32 Joe Davis,
33 Yes.

34
35 Councilmember Floreen,

36 Yeah, and so my question for you all, as I recall, this is the only zone in a CBD that
37 requires any kind of site plan for standard development. Isn't that right?

38
39 Joe Davis,

40 There are some others in Silver Spring, the Fenton Street Overlay Zone and in terms of
41 the Ripley Street and South Silver Spring. There are stipulations there in terms of site plan
42 review.

43
44 Councilmember Floreen,

45 So are they at the 20,000 square-foot level?



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1
2 Joe Davis,
3 No, they're at much lower, in fact, I think that both for Fenton Street, South Silver Spring,
4 and Ripley Street -- and we had communication with Glen [Krieger] about this earlier in the
5 week -- they require it at any development that occurs, the same as it is in Wheaton in
6 terms of current law.

7
8 Councilmember Floreen,
9 My question is this... And that's all? There's not -- in the rest of Silver Spring and in the
10 rest of Bethesda...

11
12 Joe Davis,
13 Not in Bethesda.

14
15 Councilmember Floreen,
16 ...there is no standard method site plan review, period.

17
18 Joe Davis,
19 Friendship Heights.

20
21 Councilmember Floreen,
22 Friendship Heights. And my question is then this still places Wheaton under a site plan
23 review --in a site plan review category for any larger projects.

24
25 Joe Davis,
26 It does.

27
28 Councilmember Floreen,
29 Right, which is not the case in those other CBDs generally. And my question is why did
30 you set -- retain a -- that 20,000 square foot threshold.

31
32 Joe Davis,
33 Rather than just removing it entirely?

34
35 Councilmember Floreen,
36 Rather than just removing it and create incentives to encourage the optional method?

37
38 Joe Davis,
39 We think by allowing the optional method will encourage certain incentives in and of itself.
40 Our concern was if you limit it too low, in terms of the standard method, then what you
41 really would be doing is telling developers you have to do the optional method. And I think
42 in Wheaton in terms of comments that we've received from the community, and this is
43 over the years, there's a desire to see some flexibility in terms of some projects being
44 higher density than other projects. They don't want to see everything as a optional method
45 opportunity. What we're trying to do is to also create opportunity for these smaller projects



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1 in the standard method to be able to come in, to be able to build and not have to go
2 through what we would call overly rigorous review. Keep in mind the lots are very small in
3 Wheaton. So to be able to begin to assemble the 7,000 to 10,000 square feet that we're
4 talking about, for a maximum 20,000 square foot development, you're talking about a
5 resubdivision process. So they will already have to go through the subdivision process
6 with Park and Planning. I think our view is that that really represents sufficient review. But
7 we're also trying to make the point that we don't think that it's appropriate for this
8 amendment to do away with the site plan review requirement for the standard method. We
9 think that that probably will require more in-depth review to remove it entirely. So I think
10 what we're saying is for the larger projects and the standard method they should still go
11 through site plan, but there needs to be an opportunity for these smaller scale projects to
12 occur without having to go through that time, expense. and uncertainty.

13
14 Councilmember Floreen,
15 But it still puts Wheaton in a special category.

16
17 Joe Davis,
18 It does do that but I think the community is willing to accept that.

19
20 Councilmember Floreen,
21 Yeah. And the question is what is the extent of redevelopment that this will encourage?

22
23 Joe Davis,
24 Okay, you mean in terms of...

25
26 Councilmember Floreen,
27 Do you have any feeling for that?

28
29 Joe Davis,
30 I think that's something that we could do an exercise of looking at the maps and
31 discussing opportunities. But I believe that you're going to see in the next three to five
32 years, you will see a number of projects that will come forward. You're not going to see
33 Wheaton redeveloped in three to five years. I think Wheaton redevelopment is going to
34 take a significant period of time, just as it has in Silver Spring and other areas. But I think
35 the important thing is that this will enable -- I think that there is some level of pent up
36 demand with some businesses that have wanted to expand, they've wanted to have the
37 opportunity of doing something, and this amendment will give them that opportunity. So I
38 guess what I need to be thinking about what is the amount of pent-up demand that would
39 immediately come in, versus assemblages and things that would occur over the next three
40 to five years.

41
42 Councilmember Floreen,
43 Anybody else have any response to that? Sort of an arcane conversation.

44
45 James Core,



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1 Sure, I was just going to suggest that -- thank you -- I was just going to suggest that while
2 Wheaton seems to be ready to pop, that the situation is different now than when you
3 compare it to Silver Spring and some other communities. The era of low interest rates and
4 the era of cheap commodity prices and the era of low energy prices will certainly make the
5 pace of change a little slower than it would have been in the 1990s or the first half of this
6 decade. So, you know, for those folks that are concerned about wholesale change, I just
7 didn't suspect that it's going to happen. The fundamental economics are different, but we
8 just need the opportunity to compete.

9
10 Councilmember Floreen,
11 Thank you, and Greg. Planning Board doesn't like this it looks like.

12
13 Greg Russ,
14 No, it's not that they don't like it, they believe that a lower threshold in terms of site plan
15 review should be retained. Rather than 20,000, they believe that a 5,000 square foot
16 limitation should be placed there and for a number of reasons, but for the most part, it's to
17 -- because the whole emphasis is on small retail and restaurant type uses -- to allow the
18 current owners to expand their businesses, which generally range anywhere from 3,500 to
19 6,000 square feet in size. No if you allow them to add an additional floor up to -- which
20 could amount to about 5,000 square feet, would be sufficient before you start looking at
21 the site plan review side of it. And so they decided to just go with the 5,000 as opposed to
22 20,000. They thought 20,000 was too large of an expansion.

23
24 Councilmember Floreen,
25 Was there concern about consistency with the master plan for Wheaton, the Wheaton
26 Sector Plan?

27
28 Greg Russ,
29 There were two Planning Board members who abstained from the vote. One abstained for
30 the reason of -- related to height, height issues. And that height issue was that person
31 believed that as proposed, it was 125 feet closer to the Metro, and 100 feet further away,
32 closer to the residential neighborhoods. He believed that should be retained in there and
33 the Planning Board majority believed that a 125-foot number would be sufficient, simply
34 because you could address the issue of height at the time of site plan review because this
35 is related to the optional method portion of that. The other Planning Board member who
36 abstained really thought that this Text Amendment as a whole went beyond what the
37 master -- what the sector plan allowed. And that -- but that was the majority view. She
38 thought that this just went beyond what was necessary for -- or what the master plan
39 actually allowed.

40
41 Councilmember Floreen,
42 What do you think? I mean in terms of what the master plan says.

43
44 Greg Russ,



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1 We believe -- staff believes that it is in accord. What's being changed here, we believe,
2 based on the recommendations that we made, we believe that it is in accord with the
3 master plan. We're just modifying the tools involved here, not the goals and objectives of
4 the master plan. And the tool in this case happens to be the zoning associated with it. By
5 doing limited changes, for example, in terms of if you allow the optional method of
6 development, for example, allow the optional method of development but retain the street
7 level retail, the small uses there. You know, those are some of the issues that we felt were
8 necessary, and they were already part of the Text Amendment. But we felt it needed to be
9 tightened up a little bit in terms of the recommendation.

10
11 Councilmember Floreen,
12 Did the master plan get into the details? I don't recall.

13
14 Greg Russ,
15 The master plan of -- the focus.

16
17 Councilmember Floreen,
18 The height and the square footage for site plans.

19
20 Greg Russ,
21 No, no. Not at all.

22
23 Councilmember Floreen,
24 That was always left to the overlay zone.

25
26 Greg Russ,
27 Yes, to the implementation.

28
29 Councilmember Floreen,
30 Okay, thank you very much.

31
32 Council President Leventhal,
33 Mr. Silverman.

34
35 Councilmember Silverman,
36 Thank you, Mr. President. Joe, I have a little homework assignment for you between now
37 and next week. I would like you to explain to us next week what the consequences are, in
38 your opinion, of the Planning Board's recommended changes. If the goal here is to
39 actually revitalize Wheaton, it would be helpful to understand what the practical impacts
40 are. The second thing is did anybody -- I mean, in the outreach that you did, that either
41 you did, Joe, or the Planning Board's review, what discussions did anybody have with
42 private sector individuals who you are trying to presumably encourage to participate in the
43 revitalization of Wheaton?

44
45 Joe Davis,



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1 Over the last two years I've had many discussions with the private sector in terms of either
2 developers, property owners, brokers, others who are interested in redevelopment
3 opportunities for Wheaton. And overwhelmingly the response we have is that there is no
4 incentive in Wheaton, as the rules exist today, for reasonable opportunity for
5 redevelopment to occur. That's just been an overwhelming response.

6
7 Councilmember Silverman,
8 And the amendment that is before us, in your opinion, would provide sufficient incentive
9 for that to happen?

10
11 Joe Davis,
12 We believe that it will. We tried to work closely with the private sector in terms of
13 developing this. We've worked with the Maryland Building Industry Association. We've
14 sent the proposal out to a number of developers to look at and to comment back to us on.
15 So we feel comfortable what we've done -- what we tried to do is bring all the stakeholders
16 together and sort of look at this from the standpoint of what is it that we have to be
17 thinking about that's going to make Wheaton work? We're not talking about a
18 redevelopment to create a Bethesda or a Silver Spring, we're talking about Wheaton. We
19 had to bring all the stakeholders together on it.

20
21 Councilmember Silverman,
22 What outreach did the Planning Board or its staff do with anybody in the private sector to
23 determine whether the recommendations that you've submitted to us will or will not have
24 the desired impact of revitalizing Wheaton?

25
26 Greg Russ,
27 I wish I had Khalid here because it's really a community-based effort. But he did contact a
28 number of the businesses in the Wheaton area. I cannot give you specifics of that.

29
30 Councilmember Silverman,
31 Is he likely to be at our work session?

32
33 Greg Russ,
34 Yes, he's planning to be there.

35
36 Councilmember Silverman,
37 Ask him, if you could -- tell him that I asked the question and I'll ask him the same
38 question as to who he reached out to in the private sector. My concern-- and that's why I
39 want to have this discussion -- is whether the -- it sounds like you have a proponent of the
40 ZTA saying this is what we think is necessary to get the job done. The Planning Board has
41 changes. We'll get into what the significance of those are. But I'd like to know how
42 grounded those are in the real world as opposed to what we often call the planning world.
43 Thanks.

44
45 Council President Leventhal,

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1 Okay. Mr. Perez.

2
3 Councilmember Perez,

4 Thank you, Mr. President. I apologize for my delay in getting back here. And I want to
5 thank Mr. Silverman. Those are excellent questions. I know for me, my involvement in this
6 began my first or second year on the Council when I was meeting with Fillipo and I
7 remember vividly meeting with your mother. I'm glad we have an empty chair here.
8 Shirley's sitting there, I know she's is; Shirley Lynn. And what I remember walking away
9 from that meeting with, this is the urban -- actually both Committees I met with in
10 Wheaton, and I just came away from it with a remarkable sense that there was a
11 consensus that we need to do something here. And the "we" in that sentence wasn't
12 simply the civic activists or the developers or the business owners or other interested
13 people. It was all of the above. Now were there people who had some concerns? Yeah, I
14 heard some concerns, but this was a two-year process between that first meeting and our
15 introduction of this bill. The last aspect of that process was a town hall meeting, as you
16 know, that we -- Councilmember Praisner and I chaired. And what I found interesting
17 about that meeting was we had developers there. We had developers' lawyers there. We
18 had civic activists there. We had small business owners there, some of whom are in this
19 audience today. We had people that I had never seen before. We had the usual suspects
20 -- and I say that with great fondness, people who are good friends, the long-term serial
21 activists -- and again, a few questions that were asked, and the product that was
22 introduced actually was tweaked in response to some of the feedback we got at that town
23 hall meeting. So it's been a very lengthy and deliberative process leading up to the
24 introduction of this proposal. And it's been very much of a community based process,
25 which is why I appreciated Mr. Silverman's question about what was the Planning Board's
26 process in terms of coming up with their responses because I do believe that we have
27 taken into account a lot of the stakeholder feedback. And I am confident we can work
28 through the concerns that you've raised. But I do think that the evidence is going to show
29 that -- and I'm not saying this judgmentally, Greg, but I think we ended up doing a heck of
30 a lot of outreach. And I'm going to guess, and I will concede it's a guess, that the level of
31 outreach that was done in preparation for what occurred at the Planning Board was not
32 even close to what had been done beforehand. And, again, I'm not saying that
33 judgmentally but I think those are important facts because, as Mr. Silverman correctly
34 points out, we do want to distinguish between the 30,000 feet of the planning world and
35 the reality. And this was meant to reflect some of the reality of what people were saying.
36 So I'm -- you know, I'm looking forward to those sessions. I think -- I don't think I'm with
37 you on going down to 5,000. I think there's some -- we had a lot of discussion about that.
38 But we'll have some more give and take there. But I do want to thank all the people who
39 are in this room and I want to thank the community at large because this really was a very
40 inclusive process. And I want to thank Joe and -- I don't see the mayor of Wheaton here.
41 Natalie's usually here with us...

42
43 Joe Davis,
44 Natalie's in Russia this week.



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Councilmember Perez,
She's in Russia? Oh, no, she's the mayor of Moscow this week, okay. That works for me. So I wanted to underscore what Mr. Silverman was implying, because I do have a pretty good sense of what the process was leading up to this was, because I was an active participant in that process. So I look forward to those sessions and I appreciate the Chairman of the Committee taking it up in such an expeditious fashion, because people are very anxiously awaiting. And one question for you is when -- if we do nothing, when is the sector plan currently scheduled to be taken up? I don't know if anybody knows.

Joe Davis,
At this point in terms of budget, it's shown, it could start in 2007. Discussions with staff as to whether that will happen or not, it's sort of up in the air. I know that there was discussion with staff that it would be 2005, it would be 2006, now it's 2007. And we know it's probably three to four years beyond that start point. So our concern is we need to be doing something now that

Councilmember Perez,
Is there a Metro station in your -- think about all the Metro stations. Let's stick with Montgomery County. Is there a Metro station with greater Smart Growth potential than Wheaton right now? Or to put it differently, is there a Metro station that's more underutilized right now in Montgomery County than Wheaton? I guess we could have a conversation about Glenmont, which we did recently and the garage. But I don't know if that's a rhetorical question or...

Councilmember Praisner,
Treat it that way.

Councilmember Perez,
We'll treat it that way. I throw it out there. My reaction when I saw some of the reflections from the Planning Board was we all share a belief in Smart Growth. And, you know, to sit here and say let's wait five years and address it in the sector plan I think is unrealistic and squandering of an opportunity. Greg, sure.

Greg Russ,
I don't think the Planning Board is saying let's wait five years. I think within the parameters of what the Sector Plan actually states now -- I mean there are some opportunities that the actual overlay can present as a tool, by allowing the optional method will do a lot of that. And by allowing -- continuing to allow site plan review as part of the standard methods still helps to keep the same focus in the sector plan. So I don't believe that the Planning Board recommendations -- and we can talk about this at the work sessions, of course -- stifled the ability to grow in Wheaton. It may limit it to a certain extent until the actual master plan. But the limits are still sort of watered down just from the standpoint of allowing an optional method. I mean, that's a big thing. But that is a tool that we believe can help address issues that are out there now while also maintaining the integrity of the sector plan simply by creating the street level retail, allowing the small businesses to thrive, and et cetera.



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1 We believe it can still work. I mean, within the parameters that we put out there and I'll
2 leave it at that.

3
4 James Core,

5 I sat patiently while the Planning Board representative speaks about the sector plan. And
6 in discussions with some community activists that have been around longer than I have,
7 I'd like to respectfully suggest that the discussion of the over reliance on the Sector Plan is
8 a bit of a red herring. That the 1990 Sector Plan that they're referring to is actually a
9 retread of the 1978 Sector Plan. And if you want to go back that far, I think we can
10 suggest that ideas that were great 28 years ago perhaps need some revision. And I would
11 encourage the Planning Board to be a little more flexible and less rigid in their approach to
12 the opportunities that present themselves in Wheaton.

13
14 Councilmember Silverman,

15 I have no further questions. Thank you.

16
17 Council President Leventhal,

18 Okay, that concludes group "A." Group "B" includes Matt Schmit, Bill Kominers, Tim
19 Wiens, Raquel Montenegro, and Steven Karr. Matt Schmit, are you here? Please proceed.
20 Press your button and launch in.

21
22 Matt Schmidt,

23 Good afternoon, Council President and members of the County Council. My name is Matt
24 Schmit and I'm the vice-chair for the Wheaton Redevelopment Advisory Committee. I'm
25 providing testimony on behalf of the Committee in support of enactment of Text
26 Amendment 06-11. This legislation is a proposal to amend the Wheaton Retail
27 Preservation Overlay Zone. Our committee has extensively reviewed this proposed
28 legislation. In particular, we have examined how this proposal promotes the goals of
29 Wheaton redevelopment. We believe this legislation accomplishes three objectives that
30 represent an important step forward in the redevelopment of Wheaton. First, it allows for
31 increased height and density in the urban core by utilizing the optional method of
32 development. Under the existing overlay zone the higher density optional method of
33 development is prohibited. As a result, new development particularly housing projects,
34 which would add additional customers downtown have been limited. Instead of developing
35 within the central core, many new developments have been built on the periphery. Exactly
36 the opposite of Montgomery Smart Growth strategy by allowing both methods of
37 development we believe it will provide developers additional incentives to focus their
38 efforts within the central business district. Second, the proposed legislation ensures that
39 the site plan review process is appropriate for the size and scale of the development
40 projects. Currently all projects must undergo the same site plan review process. This has
41 proven to be a huge disincentive for small businesses that would like to renovate or
42 enlarge. Instead of spending their resources on growing their businesses, they must
43 undergo a review process that is both lengthy and costly. The Committee believes that
44 relieving developers and small businesses of the site plan burden is important and
45 supports excluding projects that involve less than 20,000 square feet of floor space and



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1 less than 42 feet of building height from the site plan approval requirement. It is important
2 to note that any assemblage of lots to build new or add on to existing buildings will most
3 likely trigger the subdivision process. There is no need for two plan reviews, given the
4 other requirements of the overlay zone. Lastly, this legislation retains street level space for
5 small retail and service businesses. Small businesses are the heart and soul of Wheaton.
6 They are what make our downtown so unique. Helping to preserve small businesses will
7 be a multifaceted effort. Ensuring that small businesses have street level space set-asides
8 is an important piece of that effort. Therefore, the Committee fully supports the 45%
9 mandatory set-asides under the optional method and the 30% incentive set-asides under
10 the standard method. In conclusion, this Committee believes that Wheaton must change
11 in order to survive and grow. This legislation allows Wheaton to do that while still
12 protecting its unique character. The Wheaton Redevelopment Advisory Committee
13 strongly supports enactment of this Text Amendment as a critical step toward Wheaton's
14 future development. Thank you.

15
16 Council President Leventhal,
17 Thank you. Mr. Kominers. Oh, he's not here. Mr. Wiens.

18
19 Tim Wiens,
20 Is this on?

21
22 Councilmember Praisner,
23 Yes, it's on.

24
25 Councilmember Silverman,
26 I just got to ask, is Tim first nonprofit chair of the Chamber of Commerce? This could be a
27 historic first.

28
29 Tim Wiens,
30 Historic moment?

31
32 Councilmember Praisner,
33 Maybe in Wheaton, but not...

34
35 Tim Wiens,
36 My name is Tim Wiens. I'm the -- most of you know me as the associate director of Jubilee
37 Association of Maryland. And nonprofits have always been active in local chambers of
38 commerce and I've recently been elected as president of the Wheaton/Kensington
39 Chamber so I'm speaking to you with that hat on today. The chamber is fully in support of
40 the proposed amendments that were introduced by Councilmembers Perez and Praisner.
41 We have worked closely with Joe Davis in the development of these amendments in
42 giving input into that. And as Councilmember Perez says, this really -- we view this as kind
43 of a consensus view on what should happen. I think the business community would prefer
44 even less regulation in this area, but we review this as a reasonable compromise to move
45 us forward. One of our objectives has always been to support small business development



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1 in recognizing their legitimate interests and we believe the amendments do that. We
2 strongly oppose the changes recommended by the Montgomery County Planning Board of
3 dropping the threshold for site plan review from 20,000 to 5,000 square feet. Such a
4 change would have serious negative impact on future business development in Wheaton.
5 We've also submitted a letter of support, which you'll find on the back of this written
6 testimony. So thank you.

7
8 Council President Leventhal,
9 Thank you very much. Ms. Montenegro.

10
11 Raquel Montenegro,
12 Good afternoon, President Leventhal, members of the Council. My name is Raquel
13 Montenegro, I'm testifying on behalf of the Maryland National Capital Building Industry
14 Association. We're a regional organization representing more than 730 companies with
15 18,000 individuals in the building and development industry. The M-NCBIA supports ZTA
16 06-11. The legislating is not just a Text Amendment. ZTA 06-11 is an economic
17 development, urban revitalization and fiscally responsible action. It's designed to stimulate
18 and streamline an otherwise cumbersome and daunting process. The ZTA proposes to
19 achieve revitalization without the need for major influx of County money. Instead the ZTA
20 encourages and then facilitates private interests to spend their own money to rehabilitate,
21 revitalize, and beautify buildings and streetscape in Wheaton. This occurs without any loss
22 in control or quality of design. The legislation also sends a message to those looking to
23 invest in Wheaton, and perhaps the county generally, that there is some hope to simplify
24 the development review process. To mention just a few of the highlights, the use of the
25 optional method of development is a vehicle for creative design in other CBDs by
26 providing incentives and opportunities and we believe that Wheaton deserves no less. The
27 use of the full CBD zone heights allows buildings in CBD-2 and -3 to extend to 125 feet
28 throughout the CBD, as recommended by technical staff. Small business and retail. We
29 agree with the Planning Board. It's important to define small businesses as uses of
30 businesses with proper sizes, without regard to the owner, operator, specific type of
31 tenant, other than restaurant. It is clearly important to -- as far as restaurant, that that
32 should include other types of foods in addition to sit-down restaurants. As far as off-site
33 public use space, we support the ability to provide public use space off-site or in some
34 other way for projects less than 1,800 square feet. We request that you encourage the
35 optional method, especially to upgrade existing buildings that don't require tearing down
36 part of the building to provide public use space necessary to upgrade. As far as the
37 standard method of development. On street level retail, we support again the elimination
38 from the FAR of 30% of street level retail space used by small businesses. This allows a
39 direct correlation between the presence of retail use and the economics of the project.
40 Taking the retail out of the economic equation, rather than trying to plug it in another
41 space to offset it economically. In essence this Text Amendment proposes to recognize
42 the public benefit provided street retail. The ZTA recognizes the humanity character of
43 street retail and tries to accommodate and encourage such use. This is a reasonable
44 balance between the amenities normally required and the desire to facilitate street retail.



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1 [BEEPING] You have a copy of my testimony, and we'd be happy to participate in any of
2 the work sessions. Thank you.

3
4 Council President Leventhal,
5 Thank you. Mr. Karr.

6
7 Steven Karr,
8 [INAUDIBLE]

9
10 Councilmember Praisner,
11 Press the button.

12
13 Steven Karr,
14 I'm sorry, my name is a Steven J. Karr. My name is spelled with a "K," not a "C" and we
15 can note that as well for Karr Realty Investors, LLC. I'm a licensed architect and president
16 of Steven J. Karr, AIA, Inc. with offices located at 210 North Adams Street, Rockville,
17 Maryland. I'm also a partner in Karr Realty Investors, LLC, which controls the Wheaton
18 Volunteer Rescue Squad property in the Wheaton Central Business District. Karr Realty is
19 also a partner in the redevelopment of the Anchor Inn site. I have been an outspoken
20 advocate for Wheaton's first revitalization effort throughout the late 1980s and 1990s, as
21 well as for Wheaton's current redevelopment efforts. I advocated against the introduction
22 of the Wheaton Retail Preservation Overlay Zone in 1990 and I continue to advocate for
23 its elimination today. As this overlay zone has only served to strangle the redevelopment
24 of downtown Wheaton in contradiction to all principles of Smart Growth. It should be very
25 obvious to all that there have been no significant commercial developments within the
26 overlay zone due, for the most part, to the elimination of the optional method of
27 development under the overlay zone and to the cumbersome and cost prohibitive
28 requirements associated with the site plan review process. Especially the extraordinary
29 costs imposed by the conditions for streetscaping. As you can see, by visiting Wheaton
30 and as has been mentioned, only four projects have been constructed in the Overlay Zone
31 since its inception. As architect of record for three of these projects I can attest to the
32 deals that had to be made with Park and Planning staff to compromise alleged
33 requirements for streetscaping. The costs which impose a tremendous hardship on any
34 successful redevelopment endeavor in Wheaton. These streetscaping are such a
35 staggering burden that even the Wheaton Urban District staff find it a hardship to expand
36 and maintain streetscape improvements. Joe Davis and Joe Calloway can attest to the
37 staggering expenses associated with implementing Wheaton streetscaping components. If
38 the County cannot find money to fund streetscaping improvements, how does the County
39 expect the property owners to fund these excessive costs when extorted under the "Let's
40 Make a Deal" approach to site plan review. What I can not understand is why is Wheaton
41 so special? Why is it that I can design standard method projects throughout the Bethesda
42 CBD without any oversight and interference by Park and Planning? Yet if I were to design
43 a project in Wheaton similar to my standard project methods in downtown Bethesda, I and
44 my clients must capitulate to the day-to-day whims of Park and Planning staff. In Bethesda
45 I can do what is right for the site and what is best for my clients, but not in Wheaton. Why



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1 is Wheaton so special? Is there so little public trust in design professionals such as myself
2 that every standard method project designed in Wheaton must be subject to the wheeling
3 and dealing with unyielding and contradictory conditions imposed by Park and Planning.
4 These frustrations with site plan review requirements for standard method projects have
5 again reached the top of the curve with the current project that Greenberg and I are trying
6 to develop on the property of the former Anchor Inn restaurant, the project we now call
7 Georgia Crossing. This standard method development currently proposes two retail
8 buildings designed for a total of 20 tenant units, 100% small businesses; retail stores with
9 tenant [shelves]ranging from 12,000 square feet to 1,600 square feet. No existing
10 businesses...

11
12 [BEEPING]

13
14 Steven Karr,

15 ...would be displaced by this project. The Anchor Inn's been demolished and the rest of
16 the site is an asphalt jungle. We seek no public money. We seek no incentive based
17 bonus FAR. We implore the Council to untie our hands from these arbitrary and
18 diseconomic constraints so we can do what we do best, design attractive buildings,
19 creative jobs and tax revenues through development. My full testimony is distributed to
20 Council. Thank you.

21
22 Council President Leventhal,

23 Thank you very much. And there are no questions for this group. We appreciate your
24 testimony. The third group includes Todd Brown, Robert Levin, Leonard Greenberg,
25 Wayne Goldstein, and Diane Lynn. Todd, when you're ready please press your button and
26 begin.

27
28 Todd Brown,

29 Thank you very much, Mr. President. My name is Todd Brown, I'm an attorney with
30 Linowes and Blocher and I'm here representing a number of property owners in Wheaton
31 Triangle Park LLC, Green Mountain, LLC, and Anchor Inn properties. Those are entities
32 controlled by Leonard Greenberg but they are not the only entities that he controls or the
33 only properties that he controls in Wheaton. I'm very encouraged by the testimony that
34 you've heard here today and the support for this Text Amendment and the questions that
35 have been posed by Councilmembers about the recommendations of the Planning Board
36 which we were very much disturbed by as well. We did submit a letter to you. I have
37 additional copies, which I'll give into the record supporting the Text Amendment, dated
38 April 21st. We had a couple of questions and a couple of suggestions as to clarifying
39 language. The idea of the limited building height, we do not agree with. We think that the
40 recommendation to go to 125 feet is certainly better than 100 feet. It should be uniform
41 throughout the overlay zone. But we see no reason why it should be less than what is
42 permitted in other CBD zones, particularly when you only get to those building heights if
43 you do an optional method project, which would be subject to site plan review. So the
44 compatibility issues will be reviewed fully by the Planning Board at the time of site plan.
45 We also have a concern about the reference to small business use. Again, as was



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1 referenced by Greg's testimony, it's not defined. We think a better solution there would be
2 to refer to square footage increments as opposed to something that could be subject to
3 debate about what exactly is a small business. We also, as I had indicated, suggested
4 some clarifying language for 20,000 square foot threshold, which we would encourage you
5 to take a look at. I don't think it changes the intent of what is proposed, but it clarifies it, we
6 think. So please take a look at that in the letter. I did want to reference a comment about
7 the Planning Board and the planning staff recommendation, this appears in the staff
8 report, and I was rather shocked when I read it and I hope the Council is concerned when
9 they read something like this, particularly concerning a community like Wheaton, which
10 many would agree is in need of a shot in the arm. This is the comment, it's on page six of
11 the staff report, "Since not much has happened in the overlay zone since it's adoption in
12 1990 and no major development is expected to happen, we recommend to keep the
13 proposed amendment limited in scope and simple." That to me is the exact opposite of
14 what we should be doing and what the policymakers in the County should be doing with
15 respect to Wheaton. And you've heard some testimony about that. The issue I think that
16 we have is that the overlay zone when it was created with its prohibition on optional
17 method development and its requiring site plan review for even very small redevelopment
18 efforts, it seems to me that it was an effort to basically stop time in downtown Wheaton.
19 And that was done in 1990 and to a certain extent I think it was successful. If we look
20 around that's exactly what has happened. The question I think that is before the Council is
21 whether that policy decision should be continued. We feel it was the wrong policy decision
22 based upon the experience that we have seen. Times change. We always get smarter.
23 And we think that it is time to review this, because that type of a policy decision does not
24 seem appropriate today. The other major issue that we have is the way that the Wheaton
25 CBD, even with this text Amendment, will be treated differently than other CBDs in the
26 County; Bethesda, Silver Spring. We just went through the Woodmont Triangle Sector
27 Plan Amendment and a Text Amendment, which was aimed to spark some housing
28 development, spark some revitalization. So in other parts of the County -- and we did the
29 same in Silver Spring with the Urban Renewal Area . In other parts of the County we are
30 trying to ease restrictions to provide incentives to move forward, but in Wheaton we're
31 hanging on to some of those restrictions. Even though it certainly is an improvement, if
32 this Text Amendment goes forward, over what the current condition is, I'm not quite sure a
33 that there is a policy reason to treat Wheaton differently in terms of what is permitted
34 under the zoning. And in terms of the compatibility issues, which could exist around the
35 edges, again to the extent that a project comes in for optional method, it would be subject
36 to site plan review and so the Planning Board would have that opportunity to evaluate
37 mass and bulk and scale and building height. Thanks very much. I'd be happy to take any
38 questions.

39
40 Council President Leventhal,
41 Thank you. Leonard Greenberg.

42
43 Leonard Greenberg,
44 My father, who had been, a way long time ago, used to say "Open with a close." So
45 resuscitate Wheaton, don't suffocate Wheaton. And I'd like to thank you everyone for the

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1 positive macro send up for testimony that we've gotten for testimony today. The
2 difference, of course, is we actually lived it. When we started this program about 22 years
3 ago we said "Jeez! That'll be terrific, my kids will be in their late, 20s maybe 30s, they'll
4 have something to do. Well, we're a little bit further along than that. My name is Leonard
5 Greenberg and our operating company is Greenhill Capital Corporation. My family and I
6 moved from the District in 1955 to 3704 Jeffrey Street, Wheaton, Maryland, and have
7 been a resident of Montgomery County for approximately 52 years. We started investing
8 in Wheaton real estate 22 years ago, and currently lease to about 75 businesses on CBD
9 land area, in excess of four acres. On occasion we teamed up with the Charles and
10 Margaret Levin Family Limited Partnership who own about the same amount of ground
11 area to acquire several properties in downtown Wheaton and have interests together in
12 the Glenmont Arcade and Randolph Crossing. Although there have been modest and
13 superficial changes from time to time we have built four buildings from scratch over the
14 years, but we could have built more, barring roadblocks and administrative unpredictability
15 and intransient. We provide construction jobs, tax base and spaces for retail and
16 restaurant businesses to conduct their trade. We pay property and sales taxes. We create
17 numerous spaces that generate County and state revenue. Wheaton has tried to get up
18 on its feet beginning over 17, 18 years ago, and Park and Planning and the Council,
19 unfortunately, hold it down. During our investment years, Wheaton has missed the train
20 through three development cycles, and it appears it could be left behind again. We all
21 remember when the County thought it was in the best interest to place the retail overlay
22 16, 17 years ago, mission accomplished. We know nothing happened in the CBD. But let's
23 first look at the extortive tactics, primarily streetscaping, a voluntary act which has been
24 inserted into every building to begin construction, the cost to be borne by the private
25 developer. However, because of its cost, we abandoned two projects, one of which
26 ultimately got built three years after plans were approved, and that was the Levin-
27 Greenberg Building built at Viers Mill and Reddie Drive, where we also donated public art
28 created by Phillip Ratner, who also has a museum here in Montgomery County. Another
29 abandoned project is where the Salvation Army is currently located. Years ago we had a
30 set of building plans ready for permitting, and a requirement again for streetscaping and
31 other nonsense made the project economically infeasible. Where the County could have
32 had a new two-story building, it was just easier to sign a lease with the Salvation Army,
33 who came along with a basic "No Strings Attached" deal and paid a significant rent. The
34 County stated if we wanted to get a permit we had to implement their vision. It was a
35 vision for regulation and a requirement for streetscaping implementation. But no one could
36 find the regulation. The County boasts and cheerleads with one hand and restrains with
37 the other. The Anchor Inn site that we own could be developed in a variety of ways...

38
39 [BEEPING]

40
41 Leonard Greenberg,
42 ...but it appears it'll become the new poster child for failed policy and executive will in the
43 County if the 20,000 square foot limit site plan is not approved. If the Anchor Inn requires
44 site plan in this new legislation, and pavers and other public amenities to be paid for
45 privately, I can assure the Council and the Park and Planning Commission that my four



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1 grandchildren, with a fifth on the way, will deal with it on their schedule. Wheaton needs to
2 be resuscitated, not suffocated. The irony of all this, of course, is there an outcry about the
3 cost of rents, but because of budgetary concerns and continuing construction costs, taxes
4 and municipal costs piling up and time delays thereon rents are what they are.

5
6 Council President Leventhal,
7 Your time has expired, you've got to wrap up.

8
9 Leonard Greenberg,
10 I will. There is a zero vacancy factor in Wheaton right now. So why not encourage
11 additional supply. What a novel thought, what's the fear? New jobs, competition, the rents
12 that are rising are the sign of a healthy environment...

13
14 Council President Leventhal,
15 You've got to wrap up, we have your written testimony.

16
17 Leonard Greenberg,
18 Thank you very much. I haven't turned it in yet, but I do have it.

19
20 Council President Leventhal,
21 Appreciate it. Mr. Goldstein.

22
23 Wayne Goldstein,
24 I'm Wayne Goldstein, president of the Kensington Heights Citizens Association, president
25 of Montgomery County Civic Federation, and speaking as a member of its Planning and
26 Land Use Committee. I'm here to testify about what I call the bulldozer or sledgehammer
27 ZTA. We call it this because it could easily result in the bulldozing of all of downtown retail
28 Wheaton. This ZTA proposes the use of a zoning sledgehammer to solve a problem
29 where a zoning jewelers' hammer should be the tool of choice. While there are sincere
30 promises to take care of small businesses, despite the potential impact of this ZTA, this
31 substantial addition to the collection of small business preservation rhetoric means little if
32 the County only provides a few hundred thousand dollars in Silver Spring for awnings and
33 facade improvements to help small businesses. I've heard residents in Silver Spring and
34 Wheaton say they want existing small businesses protected from the economic dislocation
35 caused by public policies meant only to benefit those looking to make millions. All I've
36 seen is lip service and petty cash to help viable small businesses deal with rent increases
37 meant to remove them. Most importantly, this remarkably comprehensive ZTA is what I
38 would expect to see to help implement the zoning changes approved after a master plan
39 or sector plan had gone through the years of review by all stakeholders and decisions had
40 been made by the County's land use agencies. The ZTA has not been comprehensive in
41 terms of involving the public. I was involved in a ZTA that did that relating to the national
42 park seminary and I saw how involved the public was and how they were able to make
43 comments and concerns and then have them addressed in subsequent meetings. Other
44 than consultations with some individuals, presentations to group, and what I'd have to call
45 a community meeting, cheerleader/gripe session, this proposed far reaching change has

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not been properly vetted. The Planning Board understands the impact of this ZTA and has recommended a significant scaling back of the size of projects that can proceed without a site plan. The only problem that has been identified, although I just heard some new ones, is that several small businesses have not gone ahead with minor additions because of the cost of doing site plans. All that should be before you is a ZTA that allows projects of less than 1,000 to 2,000 square feet to proceed without a site plan. Everything else should wait for the Wheaton Sector Plan, which should be started sooner rather than later if the problem of encouraging redevelopment of select parcels is an issue. The lack of staffing at the Planning Board that prevents the sector plan process from beginning sooner should not be used to dramatically change this retail area through this ZTA. Please, either narrowly rewrite the ZTA to help small business expansion or reject it. We must begin the Wheaton Sector Plan now if there are all these problems. Perhaps it needs to be done simultaneously with the Kensington Sector Plan and also spend these next few years coming up with meaningful programs to protect existing viable small businesses, such as through the creation of a moderately priced retail unit program or a more creative use of incubator programs.

[BEEPING]

Council President Leventhal,
Diane Lynn.

Diane Lynn,
President Leventhal and members of the County Council, thank you very much for letting me testify before you today. I'm Diane Lynn and I represent the Wheaton Forest Civic Association who elected me president last week.

Councilmember Praisner,
Congratulations.

Diane Lynn,
Thank you. Succeeding my mother who held that position for 35 years.

[LAUGHTER]

Council President Leventhal,
It's a dynasty!

Diane Lynn,
I don't plan to compete with that record.

Council President Leventhal,
What is that, that's primogeniture? There was no male heir so it had to pass. The throne had to pass to the...



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1 [LAUGHTER]

2
3 Councilmember Praisner,
4 Start her time again.

5
6 Diane Lynn,
7 Sitting on this panel, now I have new respect for my mother because I know as I'm about
8 to speak being everyone to my left is going to hate me, no matter what I say.

9
10 Councilmember Praisner,
11 [INAUDIBLE]

12
13 Diane Lynn,
14 Yeah, that's what she always said. At our citizens meeting last week, there was a very
15 negative reaction by the group when I told them that Park and Planning was suggesting
16 that the maximum building height for optional development in the overlay zone should be
17 125 feet throughout the zone rather than the ceiling of 100 feet throughout most of the
18 zone with 125 feet height relegated to the area closest to the Metro. We especially like the
19 idea of the two-level height graduation and see the extra 25-foot height across the overlay
20 zone as too drastic a change without sector plan review. We do support the originally
21 proposed plan of 125-foot closest to the Metro for optional development and the 100-foot
22 maximum optional development for the remainder of the overlay zone with geographic
23 boundaries that were proposed. This rendering over here has changed a little bit from that
24 red mark but it basically shows you that the area beneath it would be 125-foot maximum
25 optional and above it would be 100 feet. Park and Planning staff recommended allowing
26 new building construction renovations and additions cumulatively up to 10,000 square feet
27 be exempt from site plan review. And I understand that the Planning Board further limited
28 that exemption to 5,000 square feet. I endorse -- or the Civic Association endorses the
29 staff recommendation of 10,000 feet to provide more flexibility at lesser expense to
30 existing businesses in the overlay zone. We want to encourage rooftop restaurants,
31 canopies along sidewalks and other improvements that create a town center ambience.
32 The proposed Zoning Text Amendment requires one-half of the public use space to be
33 green area including landscape features. This requirement is of benefit to the community
34 and does not adversely impact flexibility of required public use space. If developers know
35 up front the emphasis on green area they'll focus early on the options to meet the
36 requirement, rather than waiting for site plan review. The Civic Association is on record
37 throughout various testimonies before the Council and Park and Planning, most recently
38 the Zoning Text Amendment for MPDUs in September, 2004, as opposing lot line to lot
39 line coverage and promoting open green space and trees for an optimum percentage of
40 public use/green space. For esthetics, for health reasons for the entire community, trees
41 absorb pollutants and give off oxygen. Increased density has brought increased traffic,
42 exhaust fumes, and smog. More greenery and trees are needed to keep air breathable. I
43 hope the adoption of the ZTA...

44
45 [BEEPING]

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1
2 Diane Lynn,
3 ...will encourage responsible development creating the vision of a Wheaton town center
4 with adequate public use space and green areas. Thank you.
5

6 Council President Leventhal,
7 Thank you. Thank you to all the witnesses. Mr. Goldstein, how many master plans do you
8 believe the Planning Board should start right now?
9

10 Wayne Goldstein,
11 There is a need to get caught up, and in this case Kensington Heights will have to first
12 deal with the Kensington Sector Plan and the Wheaton Sector Plan immediately
13 afterwards. And I haven't run this by my executive committee yet, but it will do that tonight.
14 I'm putting out the idea that two perhaps need to be done at the same time, because of
15 the delays, because of the need in both communities to finally start to identify changes
16 and to formalize and what is part of the Sector Plan process. So these are clearly crying
17 out for attention as soon as possible. If it means hiring more staff to do this, then I think
18 that's just something that needs to be seriously considered.
19

20 Council President Leventhal,
21 You've come before us, as you said, wearing two hats. You're representing Kensington
22 Heights...
23

24 Wayne Goldstein,
25 I'm not speaking for them today because we haven't had a chance...
26

27 Council President Leventhal,
28 Right, but you're also president of the Countywide Civic Fed.
29

30 Wayne Goldstein,
31 Yes.
32

33 Council President Leventhal,
34 Surely you're aware that the Planning Board has a work plan and that it gets to different
35 sector plans and master plans on a schedule. And that, at least in my view, it isn't feasible
36 to do every master plan update, every sector plan revision that might be done to cover the
37 entire 500 square miles of Montgomery County right now.
38

39 Wayne Goldstein,
40 I'm simply proposing that the next two possibly done at the same time because of the
41 overlap, the similar issues because of thoughts about what people would like to see in
42 downtown Kensington as well as downtown Wheaton and the corridor in between. That
43 section of University Boulevard is certainly being considered as part of the Boulevards and
44 Shopping Centers Plan. I don't know where we're going to go with that, where we should
45 go, but there seems to be a joining of interests, essentially, at this point.

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Council President Leventhal,

There are no other questions for this group. Thank you to all our witnesses, and that concludes the Wheaton Overlay Zone public hearing. Agenda Item 10 is a public hearing on Zoning Text Amendment 06-12, which would clarify the minimum setback from the street for a corner lot under the MPDU optional development standards and generally amend the standards for MPDU development. Anyone who wants to submit additional material should do so before the close of business on June 16th. The Planning, Housing, and Economic Development Committee is tentatively scheduled to take this matter up on June 21st at 9:00 a.m. Please call 240-777-7900 to confirm. We have one witness, Mr. Bob Harris. Mr. Harris, please introduce yourself for the Pictron system and proceed.

Robert Harris,

Good afternoon. For the record, I'm Bob Harris of Holland and Knight. I'm appearing today to testify in support of this ZTA. This ZTA was introduced to clarify setbacks for projects and single family zones under the optional method MPDU process. This ZTA is the result of a recent discovery that the side yard setback standards in the R-200 and other single family residential zones could be interpreted, unintentionally, to impose greater restrictions on optional method projects, with MPDUs than for standard method projects without MPDUs. I've attached to my testimony a crude sketch showing the inconsistency. As you will see, under the standard method of development in the R-200 zone, without MPDUs, up top, where lots front on a main street but have a corner condition with respect to a side street, that side street is not considered a front yard and the setback from such street is 15 feet. Inconsistently, if the project is developed under the optional method standards, with MPDUs, where more flexible development standards are intended, the setback for that same unit could be considered to be 25 feet. A footnote in the Zoning Ordinance currently indicates that the MPDUs themselves, that's the unit designated there, in those projects could be located within 15 feet of the side street. But there is no clear provision relating to the market units as there is for standard method, R-200 projects. This ZTA simply carries into the optional method for single family residential zones the exact same corner setback provisions that exist under the standard method of development. It thus avoids a situation where a developer who is including MPDUs in a project under the optional method could otherwise face the requirement of greater setbacks than would be the case if that same project did not include MPDUs. That's all we have. Thank you.

Council President Leventhal,
Ms. Praisner.

Councilmember Praisner,

We haven't heard from the Planning Board on this. Are we going to?

Unidentified Speaker,
Thursday.

Councilmember Praisner,



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1 Okay, thank you.

2
3 Council President Leventhal,

4 That concludes this public hearing. Thank you. We now have Agenda Item 12, a public
5 hearing on Zoning Text Amendment 06-14, which would establish a new TOMX/TDR zone
6 to encourage mixed use, transit oriented development near a Metro station and create
7 development standards and procedures for the TOMX/TDR zone. Anyone who wishes to
8 submit additional material for the Council to consider should do so before the close of
9 business on June 27th. The Planning, Housing, and Economic Development Committee
10 work session is tentatively scheduled for July 10th at 9:30 a.m. Please call 240-777-7900
11 to confirm. There are no witnesses for Agenda Item 12. Greg, did you want to...

12
13 Greg Russ,
14 [INAUDIBLE]

15
16 Councilmember Praisner,
17 Oh, you skipped 11.

18
19 Council President Leventhal,
20 Did I skip 11?

21
22 Councilmember Praisner,
23 Yeah.

24
25 Council President Leventhal,
26 Well, that concludes Agenda Item Number 12. We'll go back now to Agenda Item 11.
27 Agenda Item 11 is a public hearing on Zoning Text Amendment 06-13, which would clarify
28 that the established building line requirements apply only if there are at least two existing
29 residential dwellings that are not nonconforming and within 300 feet of the side property
30 line of the proposed construction site, and generally amend the established building line
31 standards. The record closes immediately at the end of this hearing. The Planning
32 Housing and Economic Development Committee work session is tentatively scheduled for
33 June 19th at 9:30 in the morning. Please call 240-777-7900. We have three witnesses,
34 Reginald Jeter, Steve Orens and Brian Levitt. Reggie, please begin.

35
36 Reginald Jeter,

37 Good afternoon, President Leventhal, Councilmembers. My name is Reginald Jeter, I'm
38 speaking on behalf of County Executive Douglas Duncan in support of the proposed ZTA
39 06-13 establish building line. The purpose of this ZTA is to provide clarification that more
40 than two buildings are required to apply the established building line requirements of
41 which average building setbacks must be calculated, and to provide a clarification that the
42 process of calculating an average requires two or more building setbacks. The current
43 legislation as written is not clear on this issue and I look forward to working with the
44 Committee in developing the ZTA further.



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1 Council President Leventhal,
2 Very good. Thank you. Steve Orens.

3
4 Steve Orens,

5 Thank you, President Leventhal and members of the County Council. For the record, I'm
6 Steve Orens with DuFour and Orens and in addition to being an attorney in private
7 practice I'm a director of the Maryland-National Capital Building Industry Association. In
8 my private practice I represent clients before the Board of Appeals and clients who are
9 working with the Department of Permitting Services in determining the appropriate
10 setbacks when building permits for new in-fill construction is planned. Since the
11 establishment of the Regional District over 40 years ago, and probably even before then,
12 there's always been an established building line requirement in Montgomery County. The
13 purpose of the requirement is to foster similarity between the front yard setbacks for new
14 and existing homes. The established building line provisions of the Zoning Ordinance
15 have been consistently applied and interpreted by the Department of Permitting Services
16 for that entire 40-year period. DPS has always calculated an established building line for
17 new development by averaging setbacks between multiple residential buildings that were
18 within 300 feet of a building, a new building on a lot. There's always been requirement that
19 there be a minimum of two properties to meet the criteria to determine a mathematical
20 average. To have only one eligible building or one mathematical quantity within 300 feet,
21 an attempt to establish a average through that results in a point, not in a line to establish a
22 setback requirement. Notwithstanding the long and continuing interpretation by the
23 Department of Permitting Services, the Board of Appeals has recently interpreted the
24 Zoning Ordinance to mean that an average can be calculated from just one building. And
25 that the location of the setback for a new building is based on the single setback for one
26 building within 300 feet. We believe that it is important and it is in the public interest that
27 the County clarify that an average means two or more. And that that was what was
28 intended in order for there to be certainty and consistency in the administrative
29 interpretation of the Zoning Ordinance and the established building line. I appreciate this
30 opportunity to comment and I will be glad to work with the Council at the work session.
31 Thank you very much.

32
33 Council President Leventhal,
34 Thank you. Mr. Levin.

35
36 Brian Levitt,

37 Brian Levitt. I'm reading from a copy of the letter I submitted to the you, President
38 Leventhal. The revision proposed did not go far enough in clarifying aspects of a very
39 complicated, contentious section of the Zoning Ordinance. Since adoption ordinance
40 13-69 there have been instances of contradictory information provided by DPS regarding
41 Section 59-A-5.33 and its specific relationship to the grandfathering provisions for
42 dwellings and lots existing prior to June 1st, 1958. For example, the wording of existing
43 59-A-5.3 Subsection C in reference to "50% of the buildings described [INAUDIBLE]" of its
44 face appears to be clearly stated, but the reality of working out this calculation could pose
45 unintended consequences. Any lot, for example, any lot that has an existing front yard



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1 setback of 25 feet, plus or minus the deck, does not conform with the otherwise noted by
2 the items listed in (b)... In (b)...

3
4 Councilmember Praisner,
5 It's our microphone police.

6
7 Brian Levitt,
8 In (b) and also as noted -- specifically as noted in the DPS...

9
10 Councilmember Praisner,
11 We get our exercise that way.

12
13 Brian Levitt,
14 ...in the DPS written interpretations and DPS drawings showing this clarification would
15 already have been removed from this list of buildings as described in (b). How is the
16 average homeowner able to accurately determine whether numerous adjoining lots and
17 dwellings are or are not nonconforming, or built illegally as required by this section? Even
18 the current DPS written interpretations and their clarifying drawings provided by DPS,
19 although helpful, do not reference any calculation pertaining to this 50% reference noted
20 in 5.33(b). Why not? Also not clear is the elimination of a existing dwelling the subject
21 property that is grandfathered under 59-B-5.3 from this building list calculation as it is
22 interpreted by DPS. As interpreted now by DPS, even though there may be an existing
23 dwelling at the site and whose existing front foundation wall is setback the required
24 minimum setback of 25 feet or even more, the subject property is not allowed to include in
25 this calculation for the EBL. In fact, also, as interpreted now by DPS, any renovation or
26 alteration to an existing wall in a dwelling that is grandfathered, whether for structure
27 repairs, replacement of a chimney, wind damage, water damage, fire damage, et cetera,
28 or just ordinary renovations to a first floor wall located in front of a now newly calculated
29 EBL, this element would not be able to be replaced in its same existing location going
30 back many years. Some of these DPS interpretations may be contrary to past Council
31 actions, M-NCPPC staff reports, the PHED Committee reports, all pertaining to the EBL in
32 it's coordination Section 59-B-5.3. Council members' transcript testimony from all the
33 pertinent ZTAs going back to ZTA 90002, which was for the grandfathered lots, reflect an
34 apparent desire and understanding that these type of existing dwellings and EBL
35 regulation would not prohibit a replacement dwelling, "a reasonable new construction," or
36 additions or renovations that replace what was existing in exactly the same spot. I find it
37 hard to believe that for existing grandfathered dwellings, the Council really intended...

38
39 [BEEPING]

40
41 Brian Levitt,
42 ...by the EBL regulations currently passed to prohibit replacement of a existing wall on
43 existing foundations based on this new recalculation. For all these reasons noted above I
44 request that Montgomery Council pay careful attention to not just this ZTA but to -- ZTA
45 06-13 but how do their past actions and legislation have been interpreted to date



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1 regarding this EBL section and its application and if necessary revise the wording to
2 accurately -- to reflect accurately and clearly the past Council intent. I have a lot of respect
3 for the DPS and their work and their staff, but I do think these issues need review by the
4 Council.

5
6 Council President Leventhal,
7 Very good. Thank you. Ms. Floreen.

8
9 Councilmember Floreen,
10 Thank you, Mr. President. Mr. Jeter, do we really need to do this?

11
12 Reginald Jeter,
13 One of the reasons I guess we're bringing this to your attention is that we did have a case
14 where an average was -- one building setback was averaged. And our practice has been
15 with more than one.

16
17 Councilmember Floreen,
18 Right. So why was one averaged? It says "the buildings" -- S -- "considered in establishing
19 the building -- established building line," And then it says in another section "more than
20 50% of the 'buildings'." I mean, that suggests to me -- that plural there really is a tip-off
21 that we're talking about more than one building.

22
23 Reginald Jeter,
24 I agree with you 100% that that's what it says. But there was a ruling by the Planning
25 Board that -- I mean, the Board of Appeals.

26
27 Councilmember Silverman,
28 They missed the "S."

29
30 Councilmember Floreen,
31 So it's Board of Appeals that didn't... Did you tell them that this was a problem? And the
32 answer is we have to change the law?

33
34 Reginald Jeter,
35 We thought we needed clarification, so that we can continue with our practice.

36
37 Councilmember Floreen,
38 We're going to be even busier with Zoning Text Amendments than we are already if this is
39 how we have to go about doing business.

40
41 Brian Levitt,
42 I have a comment I'd like to add.

43
44 Councilmember Floreen,
45 Yes, sir.



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Brian Levitt,

The zoning regulations in chapter -- I think it's Chapter 8 say that a singular or plural means exactly the same thing in the regulations. That where it's plural it means singular and where it's singular it means plural.

Councilmember Floreen,
That doesn't help, does it?

Brian Levitt,
No.

Councilmember Floreen,
Okay. Thank you.

Council President Leventhal,
Ms. Praisner.

Councilmember Praisner,
Well, if it isn't "tight," its "setback" that seems to be the curmudgeon that we continue to deal with, and where I still continue to get letters of dispute as to what is or is not what we meant and what is or is not what is being interpreted. So whether it is something in front of the Board of Appeals or not, I think the suggestion is that the Zoning Text Amendment -- to the extent that it deals with certain zones and since we dealt with height and setback issues and how you calculate them in some of these same zones would benefit from our having a conversation about it, if not the Board of Appeals urging us to do so, or your reaction to the Board of Appeals. So I would like -- I know it's next week that we're talking about this issue, but I would like the copies of whatever documents the DPS uses now to explain to the public how they calculate beyond the Zoning Text Amendment, the zone language, your manual of implementation to be part of the packet. All of this assumes there is a building there to be used in the averaging. What if there's no building?

Steve Orens,
Then there would be no established building line, because the building must be within 300 feet.

Councilmember Praisner,
So if there is none and there is no line, then I'm not sure I understand, you know, building plural, building singular if there's no line, and the Board of Appeals issue maybe will have the further conversation about the actual issue at the Board of Appeals as parts -- since it's been introduced into the public hearing comments when we have this discussion within the Committee. But I think it needs to be comprehensively commented on then. Thank you.

Council President Leventhal,



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1 Okay. That concludes this hearing. Let me note that the M-NCBIA, Maryland-National
2 Capital Building Industry Association's written testimony has been included in the record
3 on ZTA 06-13 and we have already handled Agenda Item 12 So we're now on Agenda
4 Item 13, a public hearing on Zoning Text Amendment 06-15, which would establish a new
5 RMX-2C/TDR zone to implement certain recommendations in the Shady Grove Sector
6 Plan and create development standards and procedures for the RMX-2C/TDR zone.
7 Anyone who wants to submit additional material for the Council's consideration should do
8 so before the close of business on June 27th. The Planning, Housing, and Economic
9 Development Committee work session is tentatively scheduled for July 10th at 9:30.
10 Please call 240-777-7900 to confirm. There is one witness, Barbara Sears. Barbara,
11 please press your button. You've already done that and state your name for the record
12 and begin.

13
14 Barbara Sears,

15 My name is Barbara Sears. I'm an attorney with Linowes and Blocher. I'm here
16 representing today the Rockville Development Corporation, which is the owner of the
17 Grove Shopping Center. It's a 21-acre site located on Crabbs Branch and Shady Grove
18 Road at the northeast quadrant. It's now zoned C-1 and it's proposed as part of the sector
19 plan to be RMX-2C/TDR. In fact this zone was fashioned in order to implement the
20 recommendations of the sector plan, which would encourage redevelopment of it, if it
21 redevelops, which is currently a local shopping center of about 92,000 square feet and if it
22 redevelops, the idea was to encourage up to -- a mixed use up to .3 FAR and have 300
23 units whether they were developed under the standard method or the optional method of
24 the RMX and then added to that was another 120 units of senior housing, if there was a
25 purchase of TDRs. And so that was the recommendation and after working through the
26 sector plan, the property owner consented and agreed to that recommendation. As I say,
27 this ZTA is to implement that recommendation and our understanding of it is that any
28 density above the standard method equivalent, whether the standard method or the
29 optional method is used, and that's 14.5 units per acre, would require the purchase of
30 TDRs. And in this particular case that would be the 120 senior units in that the property is
31 21 acres. We have a simple suggestion that since the master plan is so specific and the
32 language was worked out through the master plan in a very specific way, we are
33 suggesting in our letter that two sections that are proposed in the ZTA, Section 59-C-
34 10.3.7-B, that it add that Section and another Section 59-G-10.131 as shown on the letter,
35 both those sections it back into the specific recommendations of the approved and
36 adopted master or sector plan when it talks about the TDRs. I think that would clear up
37 any confusion as to when the TDRs were potentially to be used. It would also allow the
38 Council, in the future, if it uses this zone, to fashion a similar very specific use of TDRs
39 and I think it would benefit everybody to tie that back into the recommendations of the
40 approved or adopted master or sector plan. So we've indicated that in our letter and we
41 really have no other comments concerning the ZTA. Thank you for your time.

42
43 Council President Leventhal,

44 Thank you for your testimony. There are no questions. Our next item is Agenda Item 14, a
45 public hearing on the proposed Sectional Map Amendment G-852 to rezone



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1 approximately 320 acres in the Shady Grove Sector Plan area to implement the Shady
2 Grove Sector Plan. The remaining land in the Sectional Map Amendment will retain its
3 existing zoning classification. Anyone who wants to submit additional material for the
4 Council to consider should do so before the close of business on June 27th. The Planning,
5 Housing, and Economic Development Committee is tentatively scheduled to take this up
6 on July 10th at 9:30. Please call 240-777-7900 to confirm. Is Joseph Parello with us? Mr.
7 Parello, please come up to the microphone, press your button, introduce yourself and
8 begin.

9
10 Joseph Parello,
11 Actually, wait just a second.

12
13 Councilmember Praisner,
14 Yeah, it's on if it's down.

15
16 Joseph Parello,
17 Here we go. Thank you very much, my name is Joseph Parello, President Leventhal and
18 other Councilmembers. I am actually the vice-president of the Shady Grove Alliance, but
19 I'm actually speaking to you as a resident of the Derwood area, the old Derwood area. My
20 question is I did some review of the sectional plan. We do see that you have the Derwood
21 Bible Church, the VEIP, and the Somerville property. My question is the Derwood
22 Business Center, which is -- also should be part of this plan due to the fact that. currently
23 that Derwood Business Center has 18-wheelers rolling down our streets. And I was
24 curious on why it was not part of the plan because stakeholders there are going to go in
25 and actually purchase these properties or develop these projects, these projects onto
26 these properties, they are actually going to have an issue because those 18-wheelers are
27 still there. If that cannot be removed, the Derwood Business Center, then a restriction
28 should be for any type of business having a large vehicle onto our streets. Second, about
29 three weeks ago I actually had a conversation with six of the delegates in Annapolis due
30 to the fact of the VEIP. Why is it -- I mean my question to them is what is the status of the
31 vehicle being removed in the Chieftain Redland Road area. It's the first time that they've
32 never heard about it. And why is it that Derwood has two VEIPs in its area. Why are we so
33 blessed? The issue is that the VEIP should be removed prior to any type of development
34 in Old Derwood. The VEIP has over 18 to 20,000 vehicles a month that go through our
35 streets. There are only two openings in our streets. And the state decided to change their
36 plans, instead of having an entrance from Redland Road to go onto our streets they forced
37 this vehicle on to our neighborhood, which we have an issue, an immense issue. The
38 other item is the stakeholders that are going to have the Derwood Bible and the VEIP and
39 Somerville, it should conform to the actual style, the [INAUDIBLE] vernacular of the
40 current Old Derwood. There was a building -- a house that was just built, three-car garage,
41 actually, it was a four-car garage, very large. It was actually laughable. People laughed
42 when they pass by because it's just does not fit. Another issue is that the current zoning
43 for some of the residents there, they've ignored the R-200. They actually have trucks that
44 are parked in our area.



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1 [BEEPING]

2
3 Joseph Parello,

4 Thank you very much and we'd like to have that corrected and have DPS give a citation to
5 the individuals that have that.

6
7 Council President Leventhal,

8 Thank you for your testimony. Ms. Praisner.

9
10 Councilmember Praisner,

11 I just want to comment from a standpoint of what the actual action is that we're taking now
12 is an affirmation by placing the zoning on property related to the Shady Grove Master Plan
13 actions. The discussion about the VEIP, or the State Vehicle Inspection Building, was that
14 one that we had during the master plan as I recall. We have no control over the state's --
15 either removal of that or continuation of that activity. Actually to the extent to have ongoing
16 concerns with the VEIP, the place to have that conversation is exactly where you did, with
17 your state legislators, who can continue to raise concerns about traffic hours and activity
18 entrances and exits. If there are facilities, homes that are inappropriately having vehicles
19 placed there or businesses going on that are inconsistent with what the zone allows, that
20 is actually outside the master plan process or the rezoning. And I would urge you to
21 contact the Department of Housing and Community Affairs depending on what code
22 violation it might be so that they can monitor and go to the extent they have.

23
24 Joseph Parello,

25 We have and nothing's been done.

26
27 Councilmember Praisner,

28 Well, then I would urge you to follow up with the Council from a standpoint of a formal
29 letter about the lack of monitoring. But this is to rezone property based on the master plan
30 and doesn't relate to violations associated with the current uses.

31
32 Joseph Parello,

33 But the -- my...

34
35 Council President Leventhal,

36 But if we -- Mr. Parello, if you have -- the testimony, do we have a written copy of your
37 testimony?

38
39 Joseph Parello,

40 Yes, you do.

41
42 Council President Leventhal,

43 So we can forward that to DPS.

44
45 Joseph Parello,



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1 Yes.

2
3 Council President Leventhal,
4 Thank you for your testimony and we'll send it to DPS.

5
6 Joseph Parello,
7 Thank you.

8
9 Council President Leventhal,
10 I'm asking our staff to make sure that happens. And that concludes Agenda Item 14.
11 Agenda Item 15 a public hearing on the proposed Sectional Map Amendment G-853 to
12 rezone approximately seven acres in the Woodmont Triangle area of the Bethesda
13 Central Business District to implement the Woodmont Triangle Amendment to the
14 Bethesda Central Business District Sector Plan. The remaining land in the Sectional Map
15 Amendment will retain its existing zoning classification. Anyone who wants to submit
16 additional material for the Council to consider should do so before the close of business
17 on June 27th. The Planning, Housing, and Economic Development Committee is
18 tentatively scheduled to take up this Sectional Map Amendment on July 10th at 9:30.
19 Please call 240-777-7900 to confirm. There are no witnesses for Agenda Item 15. Agenda
20 Item 16 is a public hearing on Bill 15-06; offenses, loitering, which would prohibit certain
21 types of loitering, require certain persons to provide a law enforcement officer with a
22 person's name, prohibit certain activity at certain public places, impose certain penalties
23 and generally amend the County loitering law. The Public Safety Committee is tentatively
24 scheduled to take up this bill at June 19th at 9:30 a.m. Anyone who wants to submit
25 additional material for the Council to consider should do so by the close of business on
26 June 14. Is Mr. Robert Coe present? Are you Mr. Coe? Please come forward, press the
27 button, introduce yourself, and proceed.

28
29 Robert Coe,
30 Thank you, Mr. President and members of the Council. My name is Robert Coe. I'm a
31 board member of the ACLU Chapter of Montgomery County and on behalf of the chapter
32 I'd like to share our reservations about Bill 15-06. Personal autonomy, what Justice
33 Brandeis famously called "The right to be left alone" is the foundation of our system of
34 limited government. For our purposes today, that means that the individual has the
35 Constitutional right to loiter, as defined by Bill 15-06 provided he is not violating some
36 other law. In lay terms, "just hanging out" is a Constitutionally protected activity. For this
37 reason proposals to criminalize loitering must be viewed with a certain scepticism and
38 carefully scrutinized. Loitering can be appropriately be made the premise for a crime only
39 when it interferes with the rights of others. Bill 15-06 is on solid ground in Section 32-14(a)
40 when loitering is coupled with interfere with or hindering the free passage of pedestrian or
41 vehicular traffic. That makes sense because, as a matter of fact, loitering can interfere
42 with the ability of others to pass on sidewalks or streets. But it can only be made a crime
43 when it actually does interfere or hinder. The real crime is the interference or hinderance,
44 not the loitering by itself. Indeed, it would be far better if the reference to loitering were
45 removed from the bill. The events should be interfering with or hindering the free passage

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1 of pedestrian or vehicular traffic, an offense that can be committed by someone who is
2 loitering or by someone who has never loitered. On the other hand there is no connection
3 at all between loitering and incitement to unlawful conduct criminalized in Section 32-14
4 (b). Indeed, the active nature of incitement seems quite contradictory to the passive nature
5 of loitering. There is a large body of law as to when incitement to unlawful conduct may be
6 criminalized based on the Supreme Court's 1969 decision in Brandenburg versus Ohio.
7 The court held that the state may not "forbid or proscribe advocacy of the use of force or
8 law violation, except where such advocacy is directed to inciting or producing imminent
9 lawless action and is likely to incite or produce such action." Section 32-14 (b) requires
10 only that the unlawful conduct "incites by word or conduct any imminent unlawful conduct"
11 and omits two elements required by Brandenburg: that the conduct be intentional and that
12 it is likely to produce the intended unlawful conduct. While the Section 32-14 (b) could
13 perhaps be repaired by adding these missing elements, there is no reason to do so. As a
14 matter of fact, there is no connection between loitering and incitement to unlawful conduct.
15 Loitering adds nothing to an unlawful incitement. Incitement is lawful or not without
16 reference to whether or not the accused was loitering. We urge the Council to delete
17 Section 32-14 (b) since there is no reason for it. As for the offense of disorderly conduct or
18 breach of the peace in the current version of Section 32-14, that offense is already more
19 than adequately covered by the Maryland Criminal Code Section 10-201(c). Once again it
20 is irrelevant if the person was or was not loitering before he engaged in the conduct that
21 constitutes disorderly conduct or breach of the peace. And finally, we have a comment
22 regarding Section 32-16, nothing in this article except 32-23 prohibits orally picketing or
23 other lawful assembly. We suggest the removal of the word "orderly." If picketing is
24 otherwise unlawful...

25
26 [BEEPING]

27
28 Robert Coe,
29 ...for example it prevents the passage of others on a sidewalk, it can be enjoined or
30 prosecuted. The statute should not suggest to a judge that she may apply her own notions
31 of orderliness to determine if picketing is lawful. Thank you very much.

32
33 Council President Leventhal,
34 Thank you. Mr. Subin.

35
36 Councilmember Subin,
37 I think I'm not -- I'm not sure if my question is for staff or Mr. Coe, but I'm trying to... This is
38 a criminal offense, correct? The way it is written now?

39
40 Robert Coe,
41 Well, if the loitering results in a criminal offense. The point is that the criminal offense --
42 you have laws covering the criminal offense without reference to loitering, like impeding
43 traffic and so forth. It seems to us that there is a connection -- you're making a connection
44 between loitering and criminal conduct here.



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Councilmember Subin,

That is what I'm -- if that is your objection, I think what I'd like to know from the Committee is why is loitering without any other issues being treated as a criminal offense when nothing is being done and somebody is not suspected? Then the criminal offense would come in, if in fact, there is something going on that would cause that person to be criminally detained. I'm not sure that even as a civil matter, where I go on this. Clearly, because somebody is standing on a street corner, they shouldn't -- I have a problem charging as a criminal. Again, the police officer, and I think there are pieces in here that cover this, that if the person is suspected of being a part of some criminal activity that is another issue. Those are the laws under which the person should be charged, not just for standing on the corner.

Robert Coe,

That is my understanding.

Councilmember Subin,

If we can add that for the Committee then?

Unidentified Speaker,

Sure.

Councilmember Subin,

Thank you.

Council President Leventhal,

There should be an interesting Committee discussion on this bill. There are no more questions. Mr. Coe, thank you for your testimony.

Robert Coe,

Thank you very much.

Council President Leventhal,

Agenda Item 17 is a public hearing on Bill 21-06: Retirement Saving Plan Distribution of Benefit which would amend the Retirement Savings Plan to add installments as a distribution option, make certain clarifying and technical amendments, and generally amend the law relating to the Retirement Savings Plan. A Management and Fiscal Policy Committee work session is tentatively scheduled for June 19th at 2:00 p.m. Anyone who wants to submit additional material for the Council's to consider should do so by the close of business June 14. We have one witness, Mr. Eric Walmark. Eric, please state your name and proceed.

Eric Walmark,

Good afternoon. My name is Eric Walmark and I'm speaking today on behalf of the County Executive Doug Duncan who supports Bill 21-06. This bill amends the Retirement Saving Plan to provide an installment payment option for the distribution of benefits. The addition



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1 of this installment option has been previously approved by the Board of Investment
2 trustees.

3
4 Council President Leventhal,

5 There are no questions. Thank you very much. Agenda Item 17 is a public hearing on Bill
6 26-06: Personnel Retirement Miscellaneous Amendments. Are you waiting to testify on Bill
7 26-06 also?

8
9 Eric Walmark,

10 Yes, sir.

11
12 Council President Leventhal,

13 Which would clarify the nonservice connected disability retirement benefit for participants
14 in certain deferred retirement option plans: Requires certain participants in the Employees'
15 Retirement system and Retirement Saving Plan properly to complete and submit a certain
16 application to obtain a refund of certain contributions. Require the county to follow certain
17 rules regarding the refund of certain contributions to the Employees' Retirement System
18 and Retirement Savings Plan made by the participants who do not properly complete and
19 submit an application for a refund of the contributions. Authorize certain participants in the
20 Employees' Retirement System to pay for the purchase of certain service credits by
21 transferring funds from certain deferred compensation accounts and generally amend the
22 law regarding retirement plans for County employees. The Management and Fiscal Policy
23 Committee is tentatively scheduled to take up Expedited Bill 26-06 on June 19 at 2:00
24 p.m.. Anyone who wants to submit additional material for the Council to consider should
25 do so by the close of business June 14th. Mr. Walmark, you are our only witness.

26
27 Eric Walmark,

28 Thank you. I'm speaking on behalf of County Executive Doug Duncan who supports Bill
29 26-06. This amends sections of both the Employees' Retirement System and the
30 Retirement Savings Plan. The amendments are three-fold. They clarify the nonservice
31 connected disability retirement benefit for a Group G, firefighter participant, who is also a
32 participant in the Deferred Retirement Option Plan, or DROP. It also provides that no
33 automatic distributions will be made from either the Employee's Retirement System or the
34 Retirement Savings Plan. and allows for a member to pay for the purchase of eligible prior
35 service credits by transferring funds from the member's 457 or Deferred Compensation
36 Plan account to the Employees' Retirement System. There's a clarification on Item 2, the
37 automatic distributions. This change necessitated by Internal Revenue Code provisions
38 that would require the County to establish individual retirement accounts for the account
39 balances of former employees who neither vest nor retire, or who have account balances
40 of less than \$5,000 unless the County Code is amended by July 1st, 2006, to state that
41 the County will not make automatic distributions of account balances . If the amendment is
42 not made, the retirement systems would have to assume the financial and administrative
43 burden of establishing IRAs in such cases. This is the primary issue that requires the
44 action by the County Council and the reason for making this an Expedited Bill on both Bills



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1 21-06 and 26-06. I thank you for the opportunity to address the Council and look forward
2 to working with the MFP Committee on the legislation.

3
4 Council President Leventhal,

5 Thank you, Mr. Walmark. There are no questions. Agenda Item 19 is a public hearing on
6 Bill 23-06: Special Capital Improvement Project, Judicial Center Annex, which would
7 authorize the planning, design, and construction of the new Judicial Center Annex in the
8 Rockville Planning Area. Action is tentatively scheduled in Legislative Session later this
9 afternoon. The record will close at the end of this hearing. There are no witnesses.
10 Agenda Item 20 is a public hearing on 24-06: Special Capital Improvement Project, Silver
11 Spring Library, which would authorize the planning, design, and construction of the new
12 Silver Spring Library in the Silver Spring Planning Area. Action is scheduled later this
13 afternoon. The record will close at the end of this hearing. There are no speakers for this
14 hearing. Agenda Item 21 is a public hearing on a Special Appropriation to the Montgomery
15 County Public School's FY '06 Capital Budget and amendment to the FY '05 through 2010
16 Capital Improvements Program for Walter Johnson High School modernization in the
17 amount of \$2.5 million. An Education Committee work session is tentatively scheduled on
18 June 22nd at 3:00. Anyone who wants to submit additional material for the Council to
19 consider should do so by the close of business June 16. We have one witness, Mr. Tom
20 Murphy. Tom, please come forward, press your button, state your name for the record,
21 and testify.

22
23 Tom Murphy,

24 Good afternoon, President Leventhal, members of the Council. I'm Tom Murphy, resident
25 of the Walter Johnson High School PTSA. It is always a pleasure to be here. I'm here on
26 behalf of the Walter Johnson High School PTSA to make two brief comments. First, we
27 want to thank you for your continuing support for the Walter Johnson's phased on-site
28 modernization. As we all know this has not been an easy process for our students and
29 staff. But we are confident with your continued support, we can successfully complete the
30 full modernization on its current approved schedule. Second, we wish to express our
31 strong support for the FY 2006 Special Appropriation and Amendment to the FY 2005 to
32 2010 CIP requested by the Board of Education in the amount of \$2.5 million for our
33 modernization project. This funding is absolutely critical if our modernization is to move
34 forward with the renovation of our auditorium later this summer and remain on schedule
35 thereafter. Accordingly we urge you to approve the Special Appropriation as requested by
36 the Board of Education. Thank you for your time.

37
38 Council President Leventhal,

39 Thank you for being here. Agenda item 22 is a public hearing on a Supplemental
40 Appropriation to the County government's FY '06 Operating Budget, Silver Spring
41 Regional Services Center for Northwest Park, Oakview, Weed and Seed Crime
42 Prevention Program in the amount of \$175,000. Action is scheduled following the hearing.
43 There is one witness, Mr. Alex Garcia. Mr. Garcia, please state your name for the record
44 and proceed.



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Alex Garcia,

Good afternoon. My name is Alex Garcia, community manager of the Northwest Park Apartments, a [Kay] Apartment Community. We are located in East Silver Spring along Northwest Branch Park inside the Capital Beltway. I'm pleased to represent the Northwest Park and Oakview Weed and Seed Steering Committee composed of nearly 20 members from the community, government, law enforcement, and non-profit agencies who have dedicated themselves to growing a healthier community. We are committed to the Justice Department's Weed and Seed motto, which focuses on law enforcement efforts in the community; the "Weed" side, while providing needed resources for community building and neighborhood restoration activities; the "Seed" side. Our community has many great assets, including Northwest Park, Hampshire West, the Chateau, and Navy Park apartment communities. We are also home to the Broad Acres Elementary School where, in fact, Kimberly Oliver was recognized as this years' National Teacher of the Year. This fall the new Roscoe Nix Elementary School will open in Oakview and significant renovations will begin in Broad Acres Park. Still, our community faces many challenges, including violent crimes, domestic violence, and alcohol abuse. We are home to many new families with significant Health and Human Services needs as well. The steering committee has developed a strategic plan to address these growing concerns. Key goals include preventing offenders from committing further crimes preventing youth from entering gangs, to improve trust between police and the community, increasing youth program offerings, and building resident leadership in the community. We believe the synergy of the efforts will lead to reductions in crime and improvements in other key areas of our community. We look forward to implementing our five-year plan with the help of the Justice Department and with others who are interested in helping us to grow a healthier community. We thank the County's leadership in responding to our call and bringing attention to the growing problems in the community and helping us launch the Weed and Seed strategies in Northwest Park in Oakview. We look forward to a rewarding partnership because together we can make a difference. Thank you.

Council President Leventhal,

Okay, thank you. There are no questions. The Supplemental Appropriation in the amount of \$175,000 funded by the United States Department of Justice grant is before the Council.

Councilmember Praisner,
Move approval.

Councilmember Subin,
Second.

Council President Leventhal,

Those in favor -- the motion was made by Ms. Praisner, seconded by Mr. Subin. Those in favor of the Supplemental Appropriation for Weed and Seed will signify by raising their hands. It is unanimous. Agenda Item 23 is a public hearing on a Supplemental Appropriation to the FY '06 Operating Budget of the Department of Public Works and



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1 Transportation for snow removal and wind and rain storm cleanup in the amount of
2 \$5,957,700 . Action is scheduled following the hearing. There are no witnesses, but is
3 there a question from Ms. Praisner.

4
5 Councilmember Praisner,

6 I just want to make the comment that I made last year at this time. When we deal with
7 snow removal, wind and rain storm cleanup, et cetera, always as a supplemental I'm not
8 sure there are the incentives to look at alternative ways of organizing to do snow removal,
9 et cetera. I wonder when was the last time we reexamined the routes in a more
10 aggressive and serious way and worked with the employees who do this hard and critical
11 work to look at different ways of perhaps doing things such that we reduce costs and are
12 more efficient in the operations? I would like a response to that in some way at some
13 point. I can understand supplementals if it doesn't cover, but I think we continue to just put
14 a number in the budget and know we are going to balance it at the end of the year. I don't
15 think there is therefore the kind of incentive to look differently at this issue or to track it
16 over time. Granted weather obviously has an effect on it, but we have normal activity and
17 we should be able to project it, include it in the budget, and not have supplementals every
18 year.

19
20 Council President Leventhal,

21 Thank you very much. I need a motion to approve \$5,957,700 for snow removal and wind
22 and rain storm cleanup. Ms. Floreen has moved and Mr. Perez has seconded the
23 Supplemental Appropriation for snow, wind and rain, those in favor of cleaning it all up.

24
25 Councilmember Silverman,

26 What about earth and fire?

27
28 Council President Leventhal,

29 Those in favor of cleaning it all up...

30
31 Councilmember Praisner,

32 They make their own money.

33
34 [LAUGHTER]

35
36 Council President Leventhal,

37 ...will signify by raising their hands. It is unanimous. Agenda Item 24 is a Supplemental
38 Appropriation to the County Government's FY '06 Operating Budget Circuit Court for the
39 Trial Court Research Partnership in the amount of \$160,000. The source is the state
40 grant. There are no witnesses to the public hearing. I need a motion to approve this
41 Supplemental Appropriation.

42
43 Councilmember Perez,

44 Move approval.



June 13, 2006

1 Councilmember Praisner,
2 Second.

3
4 Council President Leventhal,
5 Mr. Perez has moved and Ms. Praisner has seconded the Supplemental Appropriation to
6 the Circuit Court funded by a state grant. Those in favor will signify by raising their hands.
7 It is unanimous. Agenda Item 25 is our last public hearing item for the day. It is a public
8 hearing on a Supplemental Appropriation to the FY'06 Operating Budget of the
9 Department of Housing and Community Affairs for the Initiative Fund in the amount of \$2
10 million. There are no witnesses and we are going to take action right now. Move approval
11 Second. Ms. Floreen has moved and Ms. Praisner has seconded a \$2 million
12 Supplemental Appropriation to the Housing Initiative Fund. Those in favor will signify by
13 raising their hands. It is unanimous. Okay, we now have before us Legislative Session is
14 it... Yes, yes. Ms. Floreen.

15
16 Councilmember Floreen,
17 Joe, are we going -- do we expect anymore money...on the condo transfer tax?

18
19 Joe Giloley,
20 I think as of today, we've collected \$5,900,000. \$4 million was appropriated before, plus
21 this \$2 million. We probably do anticipate some more, but the rate has slowed down quite
22 dramatically.

23
24 Councilmember Floreen,
25 So we are pretty close.

26
27 Unidentified Speaker,
28 I would estimate, if we get anything over and above this \$6 million in this Supplemental
29 and the previous one, that it would be a couple of hundred thousand dollars at the most.

30
31 Councilmember Floreen,
32 Okay, please keep us posted. Thanks.

33
34 Joe Giloley,
35 Okay, thank you.

36
37 Council President Leventhal,
38 Is there a Legislative Journal for approval? We are now in Legislative Session -- no. We
39 have two bills before us for final reading. Bill 23-06, Special Capital Improvements Project,
40 Judicial Center Annex. Can I get a motion to approve?

41
42 Councilmember Andrews,
43 So moved.

44
45 Council President Leventhal,



June 13, 2006

1 Mr. Andrews has moved and Mr. Knapp has seconded Bill 23-06. A roll call vote is
2 required. The clerk will call the roll. [LAUGHTER]

3
4 Unidentified Speaker,
5 This is so "illegal."

6
7 Council President Leventhal,
8 All right. All right, come on. Come on, come on, come on.

9
10 Council Clerk,
11 Mr. Denis?

12
13 Councilmember Denis,
14 Yes.

15
16 Council Clerk,
17 Ms. Floreen?

18
19 Councilmember Floreen,
20 Yes.

21
22 Council Clerk,
23 Mr. Subin?

24
25 Councilmember Subin,
26 Yes.

27
28 Council Clerk,
29 Mr. Silverman?

30
31 Councilmember Silverman,
32 Yes.

33
34 Unidentified Speaker,
35 Mr. Knapp?

36
37 Councilmember Knapp,
38 Yes.

39
40 Council Clerk,
41 Mr. Andrews?

42
43 Councilmember Andrews,
44 Yes.



June 13, 2006

1 Council Clerk,
2 Mr. Perez?

3
4 Councilmember Andrews,
5 Yes.

6
7 Council Clerk,
8 Ms. Praisner?

9
10 Councilmember Andrews,
11 Yes.

12
13 Council Clerk,
14 Mr. Leventhal?

15
16 Council President Leventhal,
17 Yes. The bill passes 9-0. Now before us is -- we're almost done, try and hold it together
18 just a few more minutes.

19
20 Councilmember Silverman,
21 Oh, can we make it?

22
23 Council President Leventhal,
24 Bill 24-06...

25
26 Councilmember Praisner,
27 You can stay 'til tonight.

28
29 Multiple Speakers,
30 [INAUDIBLE]

31
32 Council President Leventhal,
33 Mr. Perez has moved and Mr. Knapp has seconded Bill 24-06 Special Capital
34 Improvements Project for the Silver Spring Library. The clerk will call the roll.

35
36 Council Clerk,
37 Mr. Denis?

38
39 Councilmember Denis,
40 Yes.

41
42 Council Clerk,
43 Ms. Floreen?

44
45 Councilmember Floreen,



June 13, 2006

1 Yes.

2
3 Council Clerk,
4 Mr. Subin?

5
6 Councilmember Subin,
7 Yes.

8
9 Council Clerk,
10 Mr. Silverman?

11
12 Councilmember Silverman,
13 Yes.

14
15 Council Clerk,
16 Mr. Knapp?

17
18 Councilmember Knapp,
19 Yes.

20
21 Council Clerk,
22 Mr. Andrews?

23
24 Councilmember Andrews,
25 Yes.

26
27 Council Clerk,
28 Mr. Perez?

29
30 Councilmember Perez,
31 Yes.

32
33 Council Clerk,
34 Ms. Praisner?

35
36 Councilmember Praisner,
37 Yes.

38
39 Council Clerk,
40 Mr. Leventhal?

41
42 Council President Leventhal,
43 Yes. The bill passes 9-0. The council is adjourned.

44
45 Councilmember Silverman,

June 13, 2006



- 1 The PHED Committee will start in five...